Q. You filed an affidavit, did you not, with the United States Treasury in 1935, in onnection with the gold case? A. I did not file it.

Q. You executed an affidavit, did you not, understanding that it was to be filed with the Treasury! A. Yes. I.

didn't even know exactly where it was going.

Q. I show you page 31 of Defendant's Exhibit 8, and ask you if that is a part of the affidavit which you executed.

A. It looks like it, in looking at it.

Q. I invite your attention to the following words:

"In September and October, 1931, I advised Dr. Wilhelm von Opel and his son Fritz von Opel in the preparation and execution of a deed of gift from the former to the latter, of which a copy is attached to the affidavit of Mr. Fritz von Opel herein marked Exhibit R. I participated in the conversations which led up to the execution

of these documents. In these conversations it was 1202 stated by Dr. Wilhelm von Opel and Mr. Fritz von

Opel that securities covered in the deed of gift or the proceeds of these securities should be transferred to a corporation for the purpose of protecting the interests therein created by the deed of gift."

Let me ask you now, was that statement true? A. If I made this statement, and if there is an affidavit with my signature there on that date, I probably had a better /rec-ollection after three years than I now have after 17 years.

Q. Have you any doubt that this is your affidavit? A. I would like to see the original with my signature, and then I could say definitely. I haven't read the whole thing. You present it to me and say it is,

Q. You will agree that this either is your affidavit of it is a fraudulent copy of your affidavit? A. That is correct,

that is what it would be, then. o

Q. Are you aware that this record which you hold in your hand was filed in the United States Circuit Court of Appeals by the Flaintiff corporation? A. No. I don't, but it says so.

Mr. Burling: I take it counsel will concede that this is not a perjury or manufactured affidavit.

The Witness: I don't speak it to be, I will tell you that, but you ask me something that I haven't read in detail.

1203 By Mr. Burling:

Q. So that on the assumption that this is in fact your affidavit, you believe that you more accurately recalled

in '35 than you do now in '48? A. Correct.

Q. Do you now think, on the basis of this, that it was stated by Wilhelm and Fritz von Opel that the securities given or the proceeds should be put in a corporation for the purpose or protecting the interests created by the deed of gift! A. I would say it would be in the way that I stated it there. But I don't remember that now, that that was exactly the case. All I remember now is that there was a lot of talk about a holding corporation.

Q. But you intended when you executed this affidavit to tell the truth in it, did you not? A. I always do, sir.

Q. I go on reading :

"The clauses in the deed of gift relative to the usufruct reserved to the parents of Fritz von Opel were particularly insisted on by Dr. Wilhelm von Opel, who said that he attached the greatest importance to this restriction on and reservation from the gift."

Is that correct? A. Well, I know definitely that Wilhelm von Opel wanted the usufruct for the reasons that I stated

before.

Q. He insisted on them? A. That's why it was put in—everything that was in that agreement was insisted on by somebody, and it was Wilhelm von Opel in this case who was getting the usufruct, so that I would say now yes, that is what he wanted, he wanted to have the right to create this usufruct.

Q. You go on to say, do you not:

"In German law the right of usufruct (niessbrauch) was and is recognized to be a separate estate in the thing and to be a real right or right in rem (dingliches recht) in the thing. By virtue of this concept of German law and the deed of gift itself Dr. Wilhelm von Opel and his wife retained an independent property right in the securities described in the deed of gifts and in any and all proceeds thereof, which independent property right gave the parents certain definite rights and powers under German law with reference to said securities and their proceeds."

Was that correct? A. If you read the whole thing, this is correct when you take the whole page here. I think it is not sufficiently clearly expressed. It gave them an independent right to a property, a right, and the securities would have been better.

Q. But that is not what you said. A. But it does follow from what is said in the whole thing; I would 1205 say, if you read the whole page.

Q. You read any part you think makes the point you suggest. A. "The rights and powers thus reserved to the parents by virtue of their usufruct include the right to be consulted with reference to and to prevent the sales of securities or their proceeds by Mr. Fritz von Opel; the right to have provisions for the safeguard of their usufruct..." and so on "... inserted in any agreement of pledge Mr. Fritz von Opel might make with reference to the securities or their proceeds and the right in general to invoke the jurisdiction of the courts on the question whether or not any funds, proceeds of said securities, are invested in a manner to safeguard the right of usufruct and carry out in a reasonable manner the intention of the parties as expressed in their agreement creating the same.

"In addition, by virtue of this right of usufruct the parents can at any time have the securities or their proceeds put under the joint control of themselves. By virtue

of this right of usufruct, the parents can at any time have their securities or their proceeds put under the"—which inferred that they did not, had not done it by that time, and just had a right to do all those things.

Q. Was it your opinion on June 6, 1935, that 1206 Wilhelm and Martha von Opel did have a usufruct,

or was it your opinion that they did not have a usufruct? A. From this year I would say that it was my impression that the agreement that was concluded had been carried out, and it had been really created.

Q. In fact, you so swore, did you not? Don't you say that in your affidavit? A. That wasn't my impression. I

don't say it had been carried out, no.

Q. You do not? A. I don't think I said that, no. I am sure I didn't say it. And the whole thing, I think, it leaves it wide open as to—because it says they had a right of, by virtue of this right of usufruct, can at any time have the securities, but under their joint control, but it would be my opinion when that hadn't been done, the usufruct was not yet established, and that follows from this, that's in here.

Q: You go on to state, do you not, the "right of usufruct was derived by German law from the Roman law."

A. I see.

Q. ". . . and is governed by the following among other provisions of the German Civil Code, drafted in 1896 and promulgated in 1990, which is still the law of Germany." And then you set out portions of the code, do you not? A.

That is right.

1207 Q. And then at folio 101 you say:

"I am informed that with part of the proceeds of the securities described the deed of gift Exhibit R Mr. Fritz von Opel purchased shares of a Swiss Corporation, Uebersee Finanz-Korporation A. G. If this be the fact, I am of opinion that under German law the above-described rights and obligations based on the reserved usufruct would attach to the Uebersee Finanz-Korporation shares in the same manner as if these shares had been described in the used of gift itself."

Isn't that a clear, unequivocal, and flat statement that provided that the proceeds of the Opel shares went into Uebersee, you believe that the parents Opel have a present usufructuary right in the Uebersee Finanz-Korporation shares? A. If the agreement had been carried out as I thought it had been.

Q. But you don't say anything about if it had been carried out. A. I say, if this be the fact, what you are just talking, speaking about now is, I am informed that the proceeds were, and then I say if this be the fact, I am of the opinion that under German law the above-described rights and obligations would have followed.

Q. But the only condition which you leave open as to if this is the fact is whether the proceeds had been 1208 placed in Urbersee. A. Right.

Q. You don't say a word, do you, about "and if delivery has been made to the parents?" A. Well, I was under the impression that that had happened.

Q. You regard yourself as a careful man, do you not?

A. I certainly do. o

Q. And you have spent many years in the practice of law, have you not? A. That's correct.

Q. And you know what an affidavit is, do you not? A. I think I do?

Q. Do you swear that something is a fact merely because you have an impression that it is a fact? A. Well, at that time I was under that—was really convinced that that was the situation.

Q. And that was because you were told that fact, is it not! A. I would not know at this moment how else I could have known it.

Q. You would not have sworn that the parents Opel had the usufruct unless you had been told they had the usufruct, would you? A. I didn't swear they had it.

4

1209. Q. You swore they had it if the proceeds had been. A. If it had been carried out.

Q. No, that is not what you swore, is it? A. Yes, sir. Well, that follows from this, that that is what I swore, I would say. Well, that's definitely what I meant to say,

because that is the law.

Q. Would it be fair, Mr. Stansfield, to judge your standards of candor and accuracy by saying that we could examine—the Court could read this affidavit, and then determine whether a fair reading of this affidavit is that the usufruct was in the parents! A. Personally, I don't think that I was asked to make an affidavit that the usufruct was in the parents, but to give a legal statement of what the consequences of a usufruct would be if they were.

Q. I wasn't asking you what you were asked to do. Won't you admit that, particularly, an American Government official could reasonably be expected to read from this statement that the usufruct had been created by delivery of the shares of Uebersee to his father's agent? A. I don't at this time recollect that, Mr. Burling, but I say that from reading my own affidavit, I must have been under the impression that it had been carried out, my first agreement had been carried out. I didn't think that was a question of doubt at that time.

1210 Q. When did you arrive in Washington? A.

Yesterday afternoon.

. Mr. Burling: That is all I have.

Examination by Plaintiff

By Mr. Ingoldsby:

Q. Mr. Stansfield, I wish to ask you a question concerning a statement which is contained in what is entitled "A preliminary statement of the Defendant's memorandum in support of a request that Manfred Stansfield be called as a witness of the Court." I am reading from page 4. The statement reads as follows:

"Within a week prior to the commencement of the trial of this case, counsel for the defendant have received a signed statement of a person residing in Germany, which statement was obtained by defendant's investigators in Germany. This statement reads in part as follows:"—and this is quoted from the statement—

"'I remember quite definitely that one day before 1933 Wilhelm von Opel told me, "I cannot trust anybody. Wronker-Flatow has prepared a somewhat crooked contract for us, and now he is blackmailing me. The scoundrel has received 50,000 reichsmarks as a loan and now he does not want to pay them back but wants them as a gift, and I can't do a thing, otherwise I will be in a fix."'"

That is the end of the quote. I wish to further 1211 advise you that the day after this memorandum was filed with the Court we were advised pursuant to the instructions given by the Court that that statement from which I have just read was attributed to one Erich Deku. I ask you if you know Mr. Deku, or if you know anything about that statement! A. Well, the first thing, whether I knew Mr. Deku, I met him, I believe, once for about a half a minute when Geheimrat von Opel passed through the hotel lounge and said, "I would like you to shake hands with Mr. Deku." I couldn't say for certain that the first name was the right name, but I remember the name Deku.

Q. Now will you answer the second part of the question with reference to whether or not you have any knowledge of such a statement. A. This statement for me is so outrageous that I feel a little bit embarrassed that I have to answer such a question. I never drew any crooked agreement for anybody, and certainly not for Wilhelm von Opel. I never asked Wilhelm von Opel to make me a gift. Whenever I discussed the loan at the later date with Wilhelm von Opel, I told him if he had to sue me because the Nazis would make him sue me, I would set

off my services against it. And I never at any time gave any basis for such a statement by Wilhelm von Opel.

Q. Mr. Stansfield, the statement which I have just read to you is alleged to have been made, and I quote, 1212 "One day before 1933." I wish to ask you what were your relations, what was the status of your relations?

The Court; Do you consider this in evidence!

Mr. Ingoldsby: The statement?
The Court: This memorandum.

Mr. Ingoldsby: No, I do not.

The Court: Has Mr. Deku testified to it? Mr. Ingoldsby: No, he has not, Your Honor.

The Court! Why do we rebut it then? Are we not just taking up time?

Mr. Ingoldsby: Possibly. I simply wanted to set aside

any inference.

The Court: I don't draw inferences from memoranda sent to me by counsel, unless they are in evidence under oath here. I don't want to open up a long line of testimony here as to which there is absolutely none at the moment.

Mr. Ingoldsby: Very well, I will withdraw any further

questions on that.

By Mr. Ingoldsby:

Q. Mr. Stansfield, you testified in your cross examination concerning the unique position which you occupied with General Motors and the Opel brothers at the time of the 1929 negotiations. I wish to ask you to state who in General Motors was familiar with your somewhat dual

capacity. A. Definitely John Thomas Smith; I be-

deal with these, with the negotiations and everything concerned; also, in the Opel family, everybody knew that I was acting in that double capacity.

QoWho would you say in General Motors was concerned with this transaction other than John Thomas Smith? A.

Are we talking now about the first transaction? Or are we talking about this deal here about the stock, the gift?

Q. I am talking about the first transaction—I believe the year is 1929 when General Motors and the Opel works were conducting negotiations for the over-all purchase of the Opel works. A. Well, my contact on all legal matters was with John Thomas Smith.

Q. Did you have anything to do with Mr. Alfred P. Sloan at that time? A. Yes, he was in the negotiations, himself, and I met him off and on.

Q. Was he aware of what you were doing! A. In what

I was doing in general he was fully aware?

Q. I will ask you if there was any reason for keeping the negotiations between the General Motors and the Opel works secret in 1929. A. From September or October, 1928, to about March, 1929, it was very definitely

in the interest of the Opel brothers to keep it 1214 secret, because it was a possibility that General

Motors did not accept the option, and it would have hurt the standing of the Opel brothers, of the Opel firm if it had been known that General Motors had negotiated to take over the Opel firm but turned it down after investigation.

Q. Were efforts made therefore to keep the entire negotiations secret! A. They went very far. I mean they went so far that on the day that I drafted the agreement for the option I wrote that whole agreement both in English and in German by hand, and the German part was dictated by Rechtsanwalt Hachenburg to my wife, who is not a typewriter, but helped out—does a very poor job on that. And the English was written by the managing director of the General Motors Gmbh, so that no outsider would hear anything about it. And it happened that during the full six months nobody knew anything about this agreement, it never came up.

Q. I wish to direct your attention to the period of time around October 5, 1931, at the time the gift agreement was

signed. I will ask you if any efforts were made, either by you or by any of the von Opels, to keep that agreement, secret. A. It was very important to keep that agreement secret if we didn't want to defeat the purpose. There was a large amount involved, and the consequence, the effect

of a large agreement like that on the lawmakers 1215 might have had quite some influence on the new laws, and it might have been made retroactive if

it had come out prematurely.

Q. Did you personally fear that possibility! A. I was just as much—I don't get the English word—I mean aware of that at that moment as everybody else was. It was very much in our mind. In fact, it was one of the reasons

why no notary public was called in.

Q. Are you able to state at this time, Mr. Stansfield, what the general feeling was among the German people in 1929 when it first became known that negotiations for the sale of the Opel plant had been concluded? A. There was very much resentment, and that resentment was naturally stirred up by competition, and trying to say that this was now a foreign corporation, and people should buy German cars, and so on, so that we had an uphill fight to overcome that. And one of the statements that we made there to the public, which was true at that time, that there was at least as much German capital in the firm as there was in other automobile plants, and in addition we could state that all the material was manufactured in Germany, that German labor and everything helped, so we had a lot of sentiment there which was always stirred up again by competition. We had to keep that always in our mind.

Q. Bid this situation enter into your considerations regarding secrecy at the time that the gift agree1216 ment was made in 1931? A. We were all the time

very much aware of that situation, because it always flared up again.

Q. I would like to ask you, Mr. Stansfield, concerning, your testimony regarding statements made to Mr. Kiefer or other FBI agents. First of all I would like to ask you, how many times have you been interviewed by the FBI in connection with this case! A. I would not like to be pinned down, but already while Mr. Von Opel was—during the war.

Q. Interned? A. Was interned FBI men came to talk about this, and I talked about it half a dozen times. But I wouldn't like to give the exact number. It could be five times. It impressed me as being rather often repeating the same things.

Q. On how many occasions has Mr. Kiefer come to see you? A. If I am correct, I think I saw Mr. Kiefer twice. It could be three times, but I once saw him at the offices. But at least twice that I know for certain.

Q. And did he come to your office, or did you go to his office! A. I know for certain that once he came to my house, not to the office, and once on arrangement over the phone I came to his office, downtown office.

Q. Do you recall the last time that you talked to 1217. Mr. Kiefer? A. The last time I talked to him very shortly, it was only a few minutes, and I think it was practically to the effect, as he now was talking directly about the loan, that I said that I did not want to discuss the loan, I had so many things to set off against the loan, but I didn't feel that—

Q. May I interrupt you there, when you are speaking of the loan, are you talking about the first occasion or the second occasion when you spoke to Mr. Kiefer! A. I think on the second occasion that was when he mentioned that.

Q. And where did that conversation take place? A. In my home.

Q. In your office! A. In my home.

Q. And was Mr. Kiefer alone or was someone else with him! A. I think there was somebody else with him.

Q. And did you set Mr. Kiefer or the other agent who was with him make any notes on the tenversation! A. No, I did not. I always wondered about that, why t'ry don't take notes, and why they don't afterwards present it to the party at some date to confirm that that is what they have said.

 Q. I want to direct your attention to the first occasion when you discussed this matter with Mr. Kiefer.

1218 First, are you able to tell us approximately when that was? A. Quite some time ago. I would have a hard time of fixing it at this moment.

Q. Could you give us the approximate year? A. I. think it was last year.

Q. Last year? A. Not 1948, but 1947. It could have been even—well, the date must be there, it could have been earlier.

Q. 1947 or earlier! A. That's correct, that is my recollection.

The Court: Are you going to be some little time fur-

Mr. Ingoldsby: No, Your Honor, about five minutes.

The Court: Are you going to question after that?

Mr. Burling: Nothing has come up yet, Your Honor.

The Court: All right. Go ahead, then, see if you can get through.

By Mr. Ingoldsby:

Q. I want to ask you if you ever had any conversation with any agent of the FBI, Mr. Kiefer or otherwise, regarding the Government's possible assertion of a claim for \$20,000 against you as successor in the interest of the property of Wilhelm von Opel. A. I didn't get the last part of that.

Mr. Ingoldsby (To the Reporter): Will you read it.

(Accordingly, the pending question was read by the reporter.)

1219 The Witness: I don't recollect that that was stated that way. It was always when we talked about whether I owed Wilhelm von Opel a certain amount.

By Mr. Ingoldsby:

Q. I am going to ask you to state very briefly, Mr. Stansfield, the conditions under which the matter of the \$20,000 loan from Wilhelm you Opel to you first arose. A. After I had acted for Wilhelm von Opel and the brother, Fritz Opel, in the whole negotiations and after the negotiations, the brothers felt I had saved them a lot of money, and on account of their confidence in me they had not called in other lawyers to create additional expenses. So they felt they wanted to pay me at that time.

And I told them at that time that I did not want any payment because—I had two reasons why I didn't want them to pay me at that time. One was that I wanted to keep my independence, and the other was that most of it would have been taken away from me in taxes, because I was making a lot of money at that time.

On the other hand, I had some need for some capital, because I was moving my house over, I had a little while ago I had a very extensive payments in connection with my divorce, which was over twenty years back but at that time it was quite fresh, and I had other personal matters that I wanted to settle.

In addition, I wanted to buy an interest that was 1220 offered to me from General-Motors in the Management Securities Corporation, for which I had to invest a certain capital. It was over \$10,000.

So I told Geheimrat, although I would not at this moment accept any payment for the reasons stated, I would be, I would accept a loan of \$20,000. I said we could leave the question of payment for any services rendered open during the years, how we were going to handle that, but very definitely I wanted it set up as a loan at that

time, because otherwise I would have been involved in taxes, and so on.

For that reason I wanted to keep that open. In fact, a it was my intention to be in a situation, and that was also the understanding, that I could pay it back any time I wanted so.

The Management Securities, my participation in there, would have brought me in 1936, if I hadn't left Germany, and if the Hitler situation hadn't arrived, well over a hundred thousand dollars in stock of General Motors. That was the minimum, but it might have been twice, the double amount, so that the payment would have been very easy for me.

But all conditions changed afterwards, so we went back to that, that I said, now, you could not expect me to do all these things for nothing, and although I like to pay it back, I am afraid under the circumstances it will be very hard for me, and he said, as I have stated, if is a

loan, and we will have to keep it that way.

I said, "You can keep it that way."

He said, "I'm not going to ask you for payment of the loan, except I am forced by the Nazis, or conditions"—we were talking them about the Nazis—"to sue you."

I said, "Well, in that case, I am going to set off against all the services I have rendered to you."

Does that answer you?

Q. Was that conclusion which you have just stated agreeable? A. Very definitely. I don't think he ever intended to ask for it, and I don't think he ever after things had changed the way they had changed, expected value of the loan at any amount to himself.

Mr. Ingoldsby: I have no further questions. The Court: You are excused, Mr.-Stansfield.

(Witness excused.)

The Court: Let me speak to you gentlemen at the bench.

(Accordingly, counsel approached the bench, following which the noon recess was taken, from 12:40 p.m. until 2:00 p.m.)

1222

AFTERNOON SESSION

(The trial was resumed at 2 o'clock pem. at the expiration of the luncheon recess.)

• Thereupon, Hans Frankenberg was called as a witness and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Gallagher:

Q. Will you please state your name? A. Hans Frankenberg.

Q. Where do you reside, Dr. Frankenberg? A. I reside in New York at the Ritz Carleton Hotel.

Q. And of what country are you a citizen? A. I am a citizen of this country.

Q. Of the United States? A. Yes.

Q. Doctor, it has been stated by counsel for the plaintiff that you had planned to make a trip to Europe on the 16th of this month; is that correct? A. That is correct.

Q. And it has been further stated that your plans were postponed until Saturday, which is the 18th, I believe. Is-

that correct. A. That is correct. They were post-1223 poned because I was waiting for a business associate who was late in his return from Europe.

Q. Doctor, did you have any conversation with counsel for the plaintiff, Mr. Ingoldsby, Mr. Boland, and myself, last week with respect to your information about this matter? A. I did.

Q. And would you state what the conclusion was at that time as to whether or not you would appear as a witness?

Mr. Burling: I object. The witness should not testify as to what my friends concluded, if they wished him to testify.

Mr. Gallaghe All right; strike the question.

By Mr. Gallagher:

Q. As the result of that conversation, will you state what you did? A. I went to New York again and had a reservation for Saturday morning.

Q. Did you receive a phone call from me on Friday?

A. I did.

Q. And is it not a fact that I advised you certain statements had been made, questions put to Mr. von Opel, on Friday afternoon, and as the result thereof I desired you to plan to appear as a witness? A. That is correct.

Q. What is your present occupation, Dr. Frankenberg?

A. I am a banker.

1224 Q. Can you state with what bank you are associated? A. I am associated in New York with the firm of Arnold & Bleichroeder, a firm in Switzerland conhected with the firm of Adler & Company.

Q. For how many years have you been in the banking business, Doctor? A. I was in the banking business, oh,

for prior to the outbreak of World War I.

Q. You have been associated with banks since that time? A. Oh, no. At that time I was, I used to be a banker in Frankfort.

Q. Subsequently you were associated with Adler & Company; is that correct? A. The firm in Frankfort was liquidated in '30, and I then joined these friends of mine, who at that time took an interest in the firm of Adler & Company, Zurich.

Q. Have you been associated with the Uebersee Cor-

poration in any capacity? A. Yes.

Q. In what capacity, Doctor! A. I was and I still am a director of this.

Q. Now, is the Uebersee Finanz-Korporation the only client of the bank with which you are associated? A. Of course not.

Q. There are many clients besides Uebersee, Doctor?

A. Yes. I would say, it was a very valuable client 1225 of ours, but it took a small part of my time, as I

was busy in many other fields.

Q. Are you familiar with the books and records of the Uebersee Corporation? A. Well, I am not too familiar with it. The bookkeeping was done by Mr. Geng. Of course, I received the balance sheets to be approved.

Q. What was in general the nature of the work that you did for Uebersee! A. I was in general the financial ad-

viser of Uebersee.

Q. Can you state whether or not Uebersee followed standard investment and management practices? A. No, at least, not from a banker's viewpoint.

Uebersee, according to the wishes of Mr. Fritz von Opel always engaged in, to a very great extent, in industrial propositions, which I didn't consider to be very liquid.

Q. Now, let me ask you, Dr. Frankenberg: Did you ever direct Mr. Fritz von Opel as to how he was to act in his investments? A. I could not even have done so because if I wanted to—

Mr. Ingoldsby (interposing): A little louder, please.

A. (Continued) Mr. Fritz von Opel handled the investment business quite on his own. I had no interest.

Of course, he told me after he made investments, 1220 what it was about, and I had no, practically no say in this matter.

Q. Did Mr. Wilhelm von Opel ever ask you to be his agent or representative? A. No, he never did.

Q. Did you ever serve as Wilhelm von Opel's agent, as

a matter of fact? A. I never did.

Q. Did Wilhelm von Opel ever give you any direction as to what you were to do in your capacity as director for Uebersee Corporation. A. Most certainly not.

Q. Now, where were you during the war years, Dr. Frankenberg? A. During the war! I came to this country

in May, 1940.

Q. Did you remain here after that and during the war! A. Yes, until after the war, except for two trips I made I made to Colombia, South America.

Q. And you were not back in Europe after? A. No.

Q. To your knowledge, did the Uebersae Finanz-Korporation do any business with any enemy or ally of an enemy during the war? A. I don't think so.

1227 Q. Are you acquainted with H. Mason Houghland, A. I met Mr. Houghland once, or maybe

twice, but only for a very short time.

Q. Are you acquainted with Mr. B. F. Crittenden! A. I met Mr. Crittenden. I went down to Louisiana in the year 1937, together with Fritz von Opel, and at the time I met him there.

Q. Now, on Friday last, Dr. Frankenberg, Mr. Burling asked Mr. von Opel several questions and received several

replies. ·

The questions were with respect to certain purported conversations in which you had participated. I am going to read from the record and ask you if you will state or give your comment thereon.

At page 1032 of the record, Mr. Burling, in speaking about Mr. Crittenden, asked Mr. von Opel the following

question and elicited the following answer:

"Question: Did you ever spend two weeks in Zurich with Crittenden, in the same hotel?—and I will identify

the hotel as the Baur au Lac!

"Answer: I think the Crittenden family traveled through Switzerland, and it is possible I met them in their traveling.

"Question: You spent two weeks in a series of business discussions with Crittenden in Zurich, did you not, 1228. at the offices of Hans Frankenberg?

"Answer: No."

Now, I will ask you at this point: Did you spend two. weeks in business discussions with Mr. Crittenden in Zurich in the year 1938 or '37, Dr. Frankenberg? A. I remember that Mr. Crittenden with his wife and also, I think, it was Mr. Bayer, went on a visit to Switzerland.

Maybe it was '37, I could not tell you, but most certainly I didn't carry on business negotiations with Mr. Crittenden. There was no reason to do so. That is all.

Q. I will now read from page 1051 of the record. Mr. Burling was talking about a merger of some oil companies, and in the course of the questioning, he asked the following questions and elicited the following answers, and this is directed to Mr. Fritz von Opel:

"Question: Did you and Frankenberg not decide to call a conference in Zurich on this subject, and did you not decide to call Crittenden over to Zurich to discuss this?

"Answer: There was no need."

I will ask you, Dr. Frankenberg, did you and Mr. von Opel decide that there should be a conference on this subject in Zurich, and as a result call Mr. Crittenden to Zurich! A. I could not imagine it should have happened

because there was no reason I could remember Q. Then at page 1053, discussing the same topic,

Mr. Burling asked the following question of Mr. von Opel:

"Question: Is it not a fact that the discussions of merger went on in Zurich for about two weeks?

"Answer: That sounds rather fantastic to me, Mr. Burling, because if I wanted to merge, all I would have to do is to give the orders."

I will ask you, Dr. Frankenberg, again: Were there discussions of a merger with Crittenden which went on in

Zurich for about two weeks! A. Really, I don't even get the idea of the statement because there were several oil companies down in Louisiana, all of the stock owned by Uebersee Finanz Korporation.

Now, why should we discuss a merger of those companies in Zurich. Such merger could only be found of any interest

from an American tax viewpoint.

Really, I could not see anything in it.

Q. Now, at page 1054, in the discussion of the same subject, Mr. Burling asked this question:

"Question: During these discussions was it not said that a million dollars additional capital should be put into the merged companies!

"Answer: That was what Mr. Orittenden wanted. He

was quite great spender in refining.

"Question: Didn't you and Frankenberg say that.

1230 you thought that you would do that?"

Did you make any such statement to Mr. Crittenden, Dr. Frankenberg? A. I would be in favor of that.

Q. Yes! A. I really know—it was, in my opinion, it was already too much money invested anyway in this picture.

Q. On page 1057, Mr. Burling asked this question of Mr. von Opel:

d'Question: Is it not a fact that Frankenberg told you that he, not you, had had a talk in the afternoon before this dinner, with Crittenden, and that he, Frankenberg, had told Crittenden to go ahead and consolidate the oil companies; is that not the fact?"

Did you make any such statement to Mr. Crittenden? A. It sounds to me more or less fantastic because I wasn't in charge of this.

Q. Your answer is that you didn't make any such state-

ment? A. No; I could not possibly have.

Q. Now, going to page 1059, so that you will understand what was being discussed, Mr. Burling stated or questioned Mr. von Opel, and speaking of Mr. Houghland:

"Question: Did he confer with you and Frankenberg at the Plaza in the fall of '37?"

1231 And then the answer: "That is different, that is possible."

"Question: The fact is, is it not, in 1937 Houghland had a proposal to set up a series of small subsidiaries, to run smaller-sized gasoline stations?"

That was the topic, and we go to page 1060, and at page 1060, here is the question and answer at that point:

"Question: Is it not a fact that you met him at his hotel and walked with him to the Plaza Hotel, and while you, during the walk he cartlined the proposal to you!

."Answer: That is probable.

"Question: And is it not the fact that when you reached the Plaza, you talked to Dr. Frankenberg's room, and he came down, and you introduced Houghland to Frankenberg, and then the three of you wentento the Palm Court and had a drink! "A. That is possible, if Dr. Frankenberg lived at this time in the Plaza, and we called for him there, that is possible.

"Question: And is it not a fact that before you had reached Frankenberg you told Houghland that he would have to make a full explanation of the proposal to Franken-

berg!

3

"Answer: No, Mr. Burling.
"Question: The answer is no?

"Answer: No.

"Question: Is it not the fact that at the Plaza 1232 Houghland made a full explanation of his proposal, and Frankenberg said he would not accept it?"

Did you make any such statement to Mr. Houghland? A. As far as I can recall, Mr. Houghland never asked me about any sort of business proposition because he did that exclusively with Mr. von Opel.

Mr. Gallagher: That is all.

Mr. Burling: I wish to renew my application for at

least twenty-fou; hours in which to prepare proper cross examination.

The Court: I do not think I can give you that, Mr. .

Burling.

Mr. Burling: May I be heard on it?

I am not sure I made myself clear. Plaintiffs indicated by their answers to the interrogatories that they were not calling this witness. He was an obvious one and his name. goes all the way through from '31 to date.

I did not prepare myself to cross examine, and we were then told he was sailing for Europe. My friends intended to surprise me, because they didn't call me on the telephone.

I worked on Saturday and Sunday on something which

was coming up in January, 1949,

If I knew he was to be here, I could have prepared some notes.

The Court: I just let him testify on the Uebersee. Korporation. You are thoroughly prepared in this case. I have tried to live you every courtesy I can. Mr. Burling: Thank you, Your Honor.

Cross Examination

By Mr. Burling;

Q. Dr. Frankenberg, you stated you are a United States citizen? A. Yes. sir.

Q. Of what country were you a citizen before that? A. I am a born Austrian.

Q. Of what country were you a citizen before you became a United States citizen? A. I was a citizen of Haiti.

Q. What is your position with Arnold & Bleichroeder? A. The Arnold family are very old friends of mine, as a matter of fact, since about forty-five years or so, and in my vouth.

Now, at the time they took the interest in the Swiss firm named Adler & Company, that was around '31. I joined

them in this picture.

Q. In other words, the Arnold family controlled Adler & Company; is that right? A. That is correct.

Q. And they also controlled and represented an important part of Arnold & Bleichroeder; is that correct? A. 1234 That is right.

Q. And you have been with the Arnold interest then since 1931; is that correct? A. That is correct.

Q. What position did you hold in the firm here in New-York? A. None. I just have my office there.

Q. Are you employed by anyone? A. No. I am to a very small extent a shareholder.

Q. Would it be fair to say that you represent financial interests of Arnold, that you act for them? A. Yes, I tried to do business for them, but I am not employed, and I have no say. At least, I am not an officer of the company. They ask for my advice and so on.

Q. From what do you receive compensation? What do you live on? A. Well, at the time I am doing some business of my own, and besides that, I get some from time to time—that was before the war—I lived on Adler.

Q. On Adler & Company? A. Yes.

Q. But since the war hasn't Arnold & Bleichroeder paid you anything? A. Not in the form of any salary.

Q. Well, in any way? A. Let me see. Just for a 1235 couple of years, they gave me a sort of bonus out of the income because I, in turn, gave them business.

Q. The Arnold interests, whether Adler & Company or Arnold & Bleichroeder, have made extensive advances to Fritz von Opel and his wife, have they not? A. The Arnold bank?

Q. Bidn't the same Arnold financial interests, as a matter of fact, to your knowledge, advance money to Mr. and Mrs. Fritz von Opel since '43? A. No.

Q. Do you know whether it is on is not the fact that one of the members of the Arnold family personally advanced such money since 1943? A. No.

Q. You are socially well acquainted with Mr. Fritz von Opel, are you not? A. Yes, sir.

Q. And Mrs. von Opel was released from internment in 1943, was she not? A. '43 or '44; '43.

Q. And all of the assets of Uebersee Finanz Korporation were invested in '42, were they not!

Do you know what money Mrs. von Opel has been using to live on since '43?

1236 Mr. Gallagher: We object.

The Court: If it is related to him, it may be admissible.

I will permit it, if he can trace it back to him, any interest he has in it:

The Witness: May I answer this question? I know.

By Mr. Burling:

Q. Yes. Recite what you know about it. A. I personally advanced some money to Mrs. von Opel.

Q. And he was released in May of 1945, and do you know what money he has been using to live on since then? A. Not entirely, but I advanced certain amounts of money to Mrs. Von Opel, and I assume she, in turn, gave part of it, at least, to her husband.

Q. Now, you know that Mr. Gallagher's partner, Mr. Conner, and Dr. Heinrich Kronstein, made a trip to Europe in connection with this case in '47!

Did you advance the expenses of that trip! A. No, but I presume Mrs. on Opel did.

Q. What is the total that you have advanced to Mrs. von Opel! A I think it is about \$25,000.

Q. You know, do you not, that neither Fritz von Opel nor Mrs. Fritz von Opel have any assets outside of Ger-1237 many, other than this claim they may have in this case?

Mr. Gallagher: We object to any inquiry as to what assets Mr. von Opel may have. I don't see the relevancy.

The Court: No.

Mr. Burling: The witness, I assume, has a \$25,000 interest in the outcome of this suit.

He has no chance of being repaid unless the plaintiffs prevail.

The court: You mean, he did not have any other means

to pay him; is that it?

Mr. Burling: If they don't win, he will not get back his money.

The Court: I will let you go into that.
The Witness: What is the question?

By Mr. Burling

Q. You understand that neither Fritz von Opel nor his wife have any assets outside of Germany, other than whatever claim they may have in this instant lawsuit! A. Well, after all, he has a very valuable house in St. Moritz, and they may here some others. I don't know.

Q. You testified about your knowledge of the books and records of the plaintiff corporation, did you not? A. Yes.

Q. And you yourself made a selection of documents from

these books and records for use in this very trial; did 1238; you not? A. I made a selection of the books?

Q. Yes. A. As far as I understand, all the books were produced for evidence here, and I was instrumental in having done it because I was requested.

Q 'But at an earlier date, didn't you go through the books and pick out special papers and send them to plaintiffs' counsel? A. Yes; that may be the case. If you show me the evidence you are talking about, I will be glad to testify about that and answer the question.

Q. Will you speak louder! A. I am very sorry. I have, a bad throat condition.

Q. What did you say! A. If I know to which files or books you refer, I could answer this question more precisely.

Q. Well, do you recall that you went over the books and

selected some to be sent to plaintiffs' counsel over here? A. No, that wasn't this way. At the request at that time of Mr. Conner, we went over all the books, including the year 1936, I think, and I didn't pick them out.

Q. In the middle of August, '47, did you or did you not bring over some books and records? A. I really 1239 would not remember.

Mr. Burling: Now, at this time I request to produce from the books and records a white sheet contained in the file called City Bank & Trust Company, a white sheet which recites on its face that Dr. Francenberg has selected certain documents.

May I have that, please?

Mr. Gallagher: I don't know if we have it. If there is any, great moment about what you are trying to establish, I just have a vague recollection about it. Of course, I wasn't in the case at that time, but I think possibly Dr. Frankenberg did have the files and books from 31 to '36 pulled, and we came in with them. It was Mr. Conner who got in touch with him or Gang.

The Court: Did you find the white sheet?

Mr. Burling: It has been removed. It was in this file. If I don't have it, I will have to call Mr. Laufer to testify.

Mr. Gallagher: Where was it In this file?

Mr. Laufer: Yes.

Mr. Gallagher: It still might be. I will look for it.

Mr. Burling: For the record, I am referring to the file named Uebersee Finanz Korporation, A. G. and having this title, City Bank & Farmers Trust Company.

By Mr. Burling:

Q. Now, in addition to being a director, were you 1240 not also managing director of the plaintiff corporation? A. Well, you may put it this way, if you want to: That refers only to technical matters and

financial matters. The policy, investment policy, was made by Mr. Fritz von Opel.

Q. I want to read to you from an affidavit of Mr. Fritz von Opel, and I am reading from page 52 of the Gold case record:

"In April, 1931, when I was employed in Antwerp as aforesaid, I learned through Dr. Frankenberg, an old acquaintance of my father's, then employed in Zurich asgeneral manager of a banking corporation known as Adler & Company, A. G., that the owners of the stock of Uebersee Finanz Korporation, A. G., would be willing to sell it to me."

Were you as old friend of Wilhelm von Opel in '31 or an old acquaintance? A. An acquaintance; yes.

Q. I want to read from another portion, reading at folio

165, and this is Fritz von Opel speaking now:

"I said to him, and he agreed, that, if the option were exercised on the stock of Uebers e Finanz Korporation, A. G., it might not be necessary to form a new corporation, but that the Uebersee Finanz Korporation, A. G., might serve as the holding company originally contemplated between us. My father asked me to be sure that the details were so arranged as to protect his and the

other interests in the proceeds of the deed of gift, 1241 Exhibit R, and suggested that Dr. Frankenberg

should become managing director of the holding company. The option having been exercised in the manner above described. I went to Zurich and obtained from Uebersee Finanz Korporation, A. G.,—"

Mr. Gallagher (Interposing): May I interrupt to let him have a copy of it so that he can follow?

Mr. Burling: Yes.

By Mr. Burling:

Q. I stopped at the words Uebersee Finanz Korporation, A. G.

"Under date of January 13, 1932, a power of attorney authorizing me to sign for the corporation, employing the form furnished me as above stated by Mr. Sammis. A true copy of this power of attorney is hereto attached marked Exhibit U. At the same time I had a conference with Dr. Frankenberg in which I asked him if he would be willing to serve as a member of the board and managing director of Uebersee Finanz Korporation, A. G. He stated that he would do so."

Now, skipping to folio 174, page 58, at the bottom of the page:

"I also frequently consulted with Dr. Frankenberg as managing director of the corporation regarding its investments, especially the corporation's investment in the stock

of Spur Distributing Company, Inc., amounting to

1242 \$440,871.44."

Will you now look at page 61, folio 183.

"In these corporations, Uebersee during 1933 invested an aggregate of \$756,000. Dr. Frankenberg and I intended on behalf of Lebersee, greatly to increase its investments in these oil companies," and so on.

Now, did you see Fritz von Opel's affidavit in 1935? A.

No; I saw it only much later.

Q. Is his recital of his dealings with you a correct one? A. Well, of course, he told me about it, as I stated before, about the investments he made.

As a matter of fact, the Spur stock was acquired two years before, and perhaps in 1933, something like that.

Also, these first oil properties had been acquired at that time by Mr. Fritz von Opel, and due to his presence in the United States, he discovered this very different financial situation, in a number of these companies, which were partly, especially in the later years, not very satisfactory.

The Spur proved to be different, a very good one.

Q. All I asked was: In your opinion, Dr. Frankenberg, are these portions of Mr. von Opel's affidavit, which I read

to you, a correct statement of your relation to him and to Uebersee! A. Maybe Mr. von Opel could it that it has

been this way. He is a very temperamental man, and 1243 so maybe, so he made these investments primarily without consulting me, but later on reported to me about it, asking my opinion.

Q. Well, did he ask you to become general manager and

did you agree to do so? A. I.did.

Q. And you did become general manager; is that right?

A. Only in charge of technical and financial matters.

Q. What other matters was Uebersee involved in, besides technical and financial matters? A. In investments.

Q. Investments are not financial; is that your statement! A.I refer to the word "financial." The way I meant it was in loans, financing the company, and so forth.

Q. Will you look at folio 186, please?

Look first at 185, and I am reading from Fritz von Opel's affidavit again:

"I returned to Switzerland in December, 1932. I went to Zurich and discussed with Dr. Frankenberg, as managing director of Uebersee Finanz Korporation, A. G., the investments which I had made and was contemplating for the corporation, and he approved of them."

Is that correct? A. He just said he made the invest-

ments.

Q. And you approved of them? A. Of course, I

Q. Will you also further down the page, halfway

through folio 186, look at:

"I discussed the situation with Dr. Frankenberg both by telephone and face to face, and was told by him to convert the cash holdings of the corporation into gold, or foreign exchange."

Did you give Fritz von Opel instructions to convert cash into gold or foreign exchange? A. I didn't give him instructions, but I remember in this case that I was in favor of him investing this money, either in foreign exchange on

the Swiss standard, or maybe in gold because two years ago the pound sterling was devalued, and in due course the dollar was devalued, and later on the Swiss franc was devalued.

So at that time I was of the opinion that the devaluation of the dollar was imminent.

Q. Well, the question is: Did you tell Fritz von Opel to convert dollars into gold? A. I could not say whether I told him so.

Q. Is it fair to say you told him to do so! A. Maybe I gave him this advice.

Q. What is the organization called, I believe in Portuguese, Sociedad Monte Franco? A. It is a Brazil 1245 corporation.

Q. Will you state what you know about it? is owned by two brothers of the Arnold family living in Brazil.

Q. Was it not organized by you! A. No.

Q. Will you agree that your name is translated literally-

Mr. Gallagher (Interposing): We cannot see what the Brazilian corporation has to do with the situation. It has no bearing to Uebersee.

Mr. Burling: I will state what I expect to prove, if it.

is an objection on relevance.

The testimony already is, and if it has not been introduced, we will introduce it, and we shall prove that Mr. von Opel said to a witness, who will be called here, that the Opel family were very elever, and that in the event of war with the United States, it would turn out that ownership of Uebersee was in Swiss hands, and it was stated if Switzerland became involved, it would turn out that the ownership was in Latin American hands.

We propose to further prove that the 36,900 shares of Harvard Brewery stock, which is one of the companies, we shall show was held in an account for Mrs. von Opel,

held in Sociedad Monte Franco,

We want to show that and corroborate the state-1246 ment that Mr. von Opel was also using Latin American helding companies to conceal German ownership, and, at least; the 36,000 shares of Harvard Brewery were in Sociedad Monte Franco at one time, almost exactly at the same time as the conversation was had, as we will prove, from our witness.

Mr. Ingoldsby: We will stipulate that certainly the shares of Harvard stock were in this company at this particular time, and that the property belonged to the wife. In other words, we will agree and stipulate, but I submit we want to know the relevancy and competency. If this has that purpose, we would like to know the relevancy.

Mr. Burling: This is cross examination, Your Honor. I don't know all about this, and I want to find out by the domination of the witness over the corporation, and the negotiations with Fritz von Opel, whether he was using the Brazilian company as a cloak.

Mr. Ingoldsby: Our contention is undisputed that there is no property of Fritz von Opel or his wife, with the exception of the Harvard shares which have just been mentioned, which were, however, in the South American country.

My general objection relates to this, that it is not a correct form for any searching investigation as to where any assets might be.

The Court: Well, is this an asset of the corporation in which he is a managing officer?

1247 Mr. Ingoldsby: No, this is not.

The 36,000 shares of Harvard Brewery, it is my understanding, is the property of Martha von Opel, or Margo von Opel, the wife of Fritz.

Mr. Burling: And I dispute that. I deny she had any assets of such size, and whereas they might have been carried in her name they were the property of Uebersee

Fine Rorporation, and I submit it is relevant to show and e. plore the South American holding of these assets.

The Court: If this man is an officer and knows about it, is it munaterial?

Mr. Ingoldsby: This relates to the 39,000 shares of Harvard stock, and it would not be worth over \$39,000.

The Court: But he is talking about the procedure of the

corporation ..

I would have a simple time in ruling on this if he was called in regular sequence, but it is hard to anticipate the significance of his testimony when it is not in order.

I will take up a motion to strike at the proper time.

· Mr. Ingoldsby: I'll let it stand that this should not be used as an investigation to see whether any additional assets might be found, or anything of that kind.

Mr. Burling: That is not the purpose. We have title to

them.

1248 By Mr. Burling:

Q. Do you know what shares of Harvard Brewery are currently quoted on the Curb Exchange today? A. They have reached a new low of about \$1.25.

Q. So at current prices, the 36,000 shares would be worth about \$50,000? A. Mostly.

Q. Will you agree with me that the word Monte Franco, either in Portuguese or Spanish, is a literal translation of your name? A. I would.

Q. Did you have anything to do with setting up this commercial corporation in Sao Paulo! A. No. I can explain it.

Q. Please do. A. In May, 1940, when I left Switzerland, the invasion of Switzerland seemed to be imminent.

At that time the Brazilian branch of the family who were caught in Germany with a fortune didn't want to get caught again, and they wanted certain assets held by Adler transferred, held in New York for transfer to Brazil.

I was on the boat, and on my arrival in New York, I was informed that they founded the corporation called Monte Franco, because they wanted the assets, and I was in charge partly, however, sir.

Q. Can you explain how the 36,900 shares of Har-1249 vard Brewery came to be held by Sociedad Monte Franco? A. Yes.

Q. Will you do so't' A. The 36,000 shares, among many securities, were transferred from Adler accounts to Monte Franco, for the purpose I just pointed out, and by mistake these 36,000 shares, which were the property of Mrs. von Opel, went with other assets down to Brazil because they weren't held in behalf of Mrs. von Opel, I think, in New York, but for Adler & Company, and after the mistake was cleared up, the chares went back and were as a consequence taken by the Alien Property Custodian.

Q. You say the shares have recently reached a new low

of \$1.25? A. Yes.

Q. Do you know what they were worth approximately in. the spring of '41? A. Just about the same. I think that in the years from 1937 to about the year 1942, or before maybe 1943, they fluctuated between one half a dollar to seven-eighths of a dollar. I don't know the statistics.

Q. Now, you know, do you not, that Mr. von Opel placed the shares of Uebersee in a safe deposit box at the Swei-

zerische Credit Anstalt? A. That is correct.

1250 Q. Do you know what he did with the keys for that box? A. Mr. von Opel opened the safe in his name in the Sweizerische Credit Anstalt.

I had a key and a power of attorney to open the safe, together with Mr. Gang.

Q. When did you receive the key and from whom? A. That is many years ago. I really could not tell, offhand.

Q. Well, you have been worrying about that key ever since 1935, have you not? A. Me?

Q. Yes. A. No.

Q. Well, what is your best recollection as to when you received the key? A. Well, probably shortly after the Uebersee stock was acquired by Mr. von Opel.

Q. This was sometime in early '32! A. Maybe, but I don't recollect.

Q. How long did you continue to hold the key? A. Well, these things happened many years are and I am certain I could establish exact dates, but I think I had it for several years. I think the shares finally went out of, came out of the safe.

1251 Q. When did they finally come out of the box? A.

The shares came out of the box—I could not say. I am sorry, I cannot establish the right date, but certainly they came out at the time they were sold to the Swei-

zerische Credit.

Q. And that was in '36, was it not? A. Yes.

Q. So all during the year 1935 you were in possession of the key, were you not? A. Well, the safe was, as it

goes, I was in possession of one.

Q. And if Mr. von Opel's testimony that he lost his key is accepted, then you were in possession of the sole key; is that right? A: It would have been easy to take another safe and issue new keys.

Q. Did you do that? A. No, I didn't.

Q. So you had the only key to the box in which the Uchersee shares were held? A. It is technical.

Q. Whether it is technical, you had the key? A. Yes,

but I den't know exactly when I had it.

Q. I thought you testified up until then that the sole-

A. (Interposing) I don't remember the date, but certainly the shares were in the box, not later than '36,

maybe.

Q. I am talking about all of '35. If we accept Mr. von Opel's testimony that he lost his key, then it is your testimony, is it not, that you held the only key to the box during the year '35? A. If Mr. von Opel lost his key, It would have been this way.

Q. Very good. He so testified.

Now, did you ever have a talk with Mr. von Opel in the course of which he asked you to hold the key as agent for his father?. A. No, I don't remember that.

Q. You had no conversation of any sort with respect to your holding the key on behalf of Wilhelm von Opel? A. I would not remember that.

Q. Would you say you don't remember, or you are sure you didn't? A. It may be that there was once conversation at the time this—I had the key in order to produce the stock for voting purposes, and also I had the key because the shares were serving as collateral for loans granted by Adler & Company to the corporation.

Q. Try to listen to my questions and answer them. A. Yes.

Q. I asked you: Do you mean you don't remem-1253 ber having a conversation with Fritz von Opel in the course of which he said that he wanted you to hold the key as agent for his father, or is it your testimony that you are sure no such conversation took place? A. Since I never was agent for his father, it could not have taken place this way.

Q. So you are morally certain that no conversation, such as I have described, ever took place? A. I had so many conversations, but I don't know the point you are trying to make.

Q. Are you familiar with the concept known in Continental law as the usufruct! A. Yes.

Q. Did you ever see the agreement under which Wilhelm von Opel gave his shares, 600 shares of Opel stock to Fritz von Opel? A. I don't remember when I saw this agreement for the first time.

Anyway, I do remember that I didn't act as agent for Wilhelm von Opel.

Q. But I am getting to something else.

You understand, do you not, that if you had held the key as agent for Wilhelm von Opel, that would have constituted delivery to him of the asset, and that would have brought into existence the usufruct? Did you not know that?

1254 A. No.

Q. Did you not know that? A. No, but I have already stated, I didn't hold the key as agent, and furthermore, how could this usufruct be established in this way if the shares served for collateral for loans granted? Otherwise, that would be absolutely contradictory.

Q. We will let the lawyers argue about that one. A.

Well, I am not a lawye.

Q. At any rate, the purpose of my questioning is to see if you do not understand that it would be very important if you did, in fact, act as Wilhelm von Opel's agent, because that fact would bring into existence the usufruct?

A. I never acted as his agent.

Q. But you understand it would be very important if you did, don't you? In other words, you are not at a loss to know what I am questioning you about? A. If you say

80.

D

Q. I will ask you once more.

Did you say you were not a lawyer? A. I am not a lawyer.

Q. Did you ever study law? A. Partly only. I studied

national economy.

Q. Will you describe what legal education you have had?

A. I graduated from the University, in National Economy.

1255 Q. Will you describe what legal education you

have had? That is what I asked you.

· Have you never studied law at all? A. No; only partly;

a few lectures I attended.

Q. Now, I want to know what your testimony is. Are you saying just that you had a lot of conversations with Fritz von Opel and you don't remember whether or not he ever asked you to serve as his father's agent and hold the key, or is it your testimony that you feel sure you had no such conversation? A. I am sure that I never acted as agent.

Q. Really, Dr. Frankenberg, you are a very well educated and experienced man. I am sure you understand.

Please answer my questions. A. If Mr. Fritz von Opel-

Q. (Interposing) I didn't ask you about "if."

Are you saying you don't remember, or are you saying— Mr. Gallagher: (Interposing) It would simplify it if Mr. Burling would ask two questions, instead of giving alternative questions, which are confusing him.

The Court: It is very difficult.

By the Court:

Q. When you got the keys to the box, or at or about that time, do you remember having a conversation with Mravon Opel in which you stated that you would hold the key

as agent of Wilhelm von Opel? A. Most cer-

1256 tainly not, because—

- Q. (Interposing) You remember you didn't have it? A. At that time, certainly. Two keys were in existence.
- o Q. Your present memory, what is in your mind, not what you might have done or reasons for it, do you hold in your minds as to whether you spoke about agency or discussed this or not? A. I would say not.

Q. You have a clear memory in your mind that it was not discussed? A. Oh, yes, I never did.

Q. Well, then, your memory is that you didn't. That is the only way we know you didn't.

Mr. Burling: Would you ask him if he remembers if he didn't at some later time, after the key was first handed to him.

The Court: We are speaking, Mr. Frankenberg, and we have to speak in Court here about memories, and we ask witnesses what they carry in their minds, and the lawyers do the arguing before me.

What you carry in your mind is what he is talking about. The Witness: Yes; thank you.

By Mr. Burling:

Q. Would your answer to His Honor's question be 1257 the same if he asked you if you ever had a conversation with von Opel after he first handed you the key, a conversation about holding the key as Wilhelm von Opel's agent! A. Not holding the key for Wilhelm von Opel as agent.

Q. You had no such conversation at any time? A. I

don't think so.

Q. When did you first see the record in the Gold case?

A. I remember that Mr. von Opel showed to me this book.

Q. When? A. Maybe '39. I don't know when, but I never took the attention.

Q. Will you stand up, please?

Do you recognize this gentleman who just stood up? A. Certainly, I do.

Q. He is Mr. Worthington? A. Yes, sir.

Q. Did you tell him that you were a Doctor of Civil Law? A. Civil Law, that is?

Q. Yes. Did you tell him that? A. I.don't remember.

that.

Q. Now, I want to read from the affidavit of Fritzovon Opel, dated June 7, 1935, reading from folio 197, at page

66, in the middle of the page; have you found the

1258 place! A. Page 68!

Q. Page 66, folio 197. A. Yes, I have it.

"The 97 bearer shares of Uebersee which I acquired in the manner above stated are now on deposit in a vault in my name, No. 1917, with the Swiss Credit Anstalt in Zurich, Switzerland, the key to which is in the possession of Dr. Frankenberg. This key is held by Dr. Frankenberg as agent and representative of my father, Wilhelm von Opel, for the purpose of safeguarding his usufruct."

Now, on June 7, 1935, was the key to the box in your, possession? A. That I would not remember. I told you

already that I don't recollect for how many years I had the key.

Q. And at that time were you the agent and representa-

tive of Wilhelm von Opel? A. No, I was not.

Q. Now, the fact is, is it not, that in 1935 a copy of this affidavit was sent to you for your information; isn't that so? A. I would not remember.

Q. At any rate, when you first did discover this, did you say to Fritz von Opel: that this is a terrible mistake; that

I never was your father's agent; and your state-

1259 ment under oath is a mistake and incorrect! A.

Maybe at that time Fritz von Opel was of the opinion that L was a sort of agent.

Q. I wonder if you will try to answer the question. A.

I didn't say that to him, no.

Q. Did you say to any agent of the United States Government that it had been misinformed with respect to your acting as agent for Wilhelm von Opel? A. (There was no response.)

Q. You will have to answer. Do not shake your head,

as the reporter cannot write that down.

What is the answer, please? A. No.

Q. Now, at the time the Gold case came to trial in the District Court, Southern District of New York, Mr. Kressel represented the plaintiff corporation here, did he not! A. He did.

Q. Is it not a fact that at that time you saw this affidavit? A. Mr. von Opel's affidavit?

Q. Yes. A. That is probably so.

Q. Didn't you know that the affidavit contained a misstatement about you? A. I didn't know about that.

Opel swore that you were Wilhelm von Opel's agent in holding the key, didn't you? A. Now, at the time this matter came to my attention, I will now say about what—

Q. (Interposing) Will you answer the question? That is not true? A. That is true; yes.

Q. Didn't you learn of this at the time the lawsuit was tried? A. No.

Q. Didn't you testify about that a minute ago? A. No.

Mr. Burling: Well, excuse me.

Mr. Gallagher: The record doesn't show that.

'The Court: He can ask him if he did question him.

By Mr. Burling:

Q. Didn't you say that you probably saw this affidavit during the trial of this action, and that is the Gold case in the Southern District of New York! A. I am very sorry, but I must have misunderstood the question, and I didn't want to say that.

Q. Well, you did see it at an earlier date, did you not?

A. No.

1261 Q. Some earlier date, two years ago, you said just that, didn't you?

Perhaps I can refresh your recollection. A. If you please.

Q. You were interrogated by Mr. Worthington, whom

you just identified, were you not? A. Yes.

Q. Did you give him the following answers to the following questions:

"Question: So that you never represented Wilhelm von

Opeli"...

This is page 37, and the answer is:

Answer: No, never. I wasn't in the picture at all at that time.

"Question: Did any discussions ever come up with respect to the obligations of Fritz or Uebersee to Wilhelm under this usufruct?

"Answer: No.

"Question: Have you ever read this affidavit that was filed in the so-called Gold case?

"Answer: Yes, I am sorry I did, yes, but at the time, as a matter of fact, it was filed, I had no knowledge about it. It got to my knowledge out of this lawsuit which arose later on, which was handled by Mr. Kressel, and only then at that time I had seen it, because I did not work on it," and then it goes on.

1262 Did you see it at the time of the lawsuit? It was handed to Mr. Kressel? A. I don't even know at

what time this was:

Q. Well, I don't care what time it was, but did you see it at the time of the lawsuit? A. I really don't remember.

Q. But do you remember telling Mr. Worthington you did see it at the time of the lawsuit? Will you answer the question, please? A. I it is on the record, I probably said so.

Q. Do you have any explanation how you came to say that to Mr. Worthington! A. No, I haven't.

Q. Did you say further, and new I am reading from pages 38 and 41, three lines from the bottom of page 38:

"Now, according to our, at that time European conception, we thought it was the good right of Uebersee to claim this gold and to have it here and have it earmarked for the Swiss National Bank. That was the content of this lawsuit. Now, there was one point which apparently here was considered possibly to be weak, and that would have been if Uebersee had been doing business within the United States. So, therefore, apparently the people in charge of this lawsuit, which, after all, was lost, trying to prove in this affidavit first of all, that they were not doing

1263 business here, and so on, and so forth; and then

they wanted to stress the point that Fritz von Opel, who was the only one who always was during these years within the United States as a visitor from time to time, that he could not possibly be, that his presence here could not possibly be established as if Uebersee was doing business through him, or something like that. Therefore, he tried in this affidavit, as well as could be done, to distance

himself to a very considerable extent, as I remember, from Uebersee and from these assets. But then, I perfectly agree that if sombbody reads it now, he has a perfectly other impression necessarily, because everything which was stated here was just to put back from him—well, I mean he could do so, because there is nothing—therefore, he produced this gift agreement and all this sort of stuff, which after all, later on, was nullified anyway. But at that time, in his opinion apparently, it was still in existence."

Did you so testify! A. Yes, I did.

Q. Now, does that nefresh your recollection as to when you first saw the Gold case affidavit? A. I really—it is hard to answer the question, I never was is charge of the lawsuit, and I never knew very much about it, so that was my impression, I stated there. I surely would say some-

thing just about the same now. It was a personal im-

1264 pression I had.

Q. Did you ever talk to Wilhelm von Opel about the usufruct provisions? A. No.

Q. Did you ever say that you had talked to Wilhelm von Opel about the usufruct?

1265 Mr. Gallagher: Can we have that question made a little bit more specific, Your Honor, as to when and where

Mr. Burling: I am coming to it, as soon as I find it in the record, please.

By Mr. Burling:

Q. Reading from page 32, at the middle of the page of the Worthington-Looney interrogation.

"Question: Didoyou ever talk to Wilhelm von Opel about

this usufruct?

"Answer: Well, I remember he told me in these years about it, but I wasn't—that was before I came into the picture."

Do you remember now that you had a talk with Wilhelm about the usufruct?

Mr. Gallagher: Your Honor, I submit he hasn't asked the witness the whole answer contained here in the transcript; and the whole portion of it should be read.

The Court: He is asking him his recollection, now, and if you want to ask him the rest of it, you can do so later?

The Witness: For the moment, I really don't remember the occasion I referred to in this testimony.

By Mr. Burling:

Q. You don't deny you did say to Mr. Worthington and to Mr. Looney that you did talk to Wilhelm about 1266 the usufruct! A. For the moment I really couldn't remember.

Q. I ask you to examine Defendant's Exhibit 50-A, which has been already marked in evidence. It is a document taken from the records of Uebersee. I ask you to read it and state what it is. A. Well, that apparently refers to a request of the Swiss authorities that the corporation should submit under the Swiss banking law.

Q. And I want to read you a sentence in this letter and

ask you to explain it-

"The entire capital of our company comes from a single group which also has a controlling interest in the capital stock."

That letter is dated November 27, 1935. Can you identify the letter, or name the persons who formed the group which then had a controlling interest in the capital stock of Uebersee! A. The only person with an interest was Fritz you Opel. It is the usual way to express it.

Why should a corporation state that it has only a single shareholder? So, for this purpose, it was perfectly satis-

factory to say it is a single group.

Q. The Swiss Federal Bank Commission is an agency of the Swiss Federal Government, is it not? A. I couldn't answer this question. It is something like, yes.

1267 Q. And is it the Swiss banking practice for bankers to tell the truth to government agencies, or not? A. The issue in this case was, whether, for instance, if the corporation would have been active in accepting moneys, or semething like that.

Q. Will you answer my question? A. It has no bear-

ing on the case.

Q. Will you answer my question, anyhow? A. Certainly, if we would have thought the request to state exactly who this group is, we would have certainly complied.

Q. Yes; but is it the general practice to be truthful in reporting to the Swiss Government! A: It is certainly

a general practice.

Q. You do not regard it as misleading to state that the controlling interest in the corporation is owned by a group, when in fact it isn't owned by a group but by a single person? Is that correct? A. Not for this purpose.

O. Not for this purpose-very good.

Mr. Burling: I ask Your Honor's indulgence. We seem to have made a mistake in the exhibit number.

By Mr. Burling:

Q. I ask you to look at Defendant's Exhibit 66-A 1268 for identification, which is already in evidence, to look at the last page, and state whether a copy of this was not sent to you. A. Well, it says it was sent to me; but I do not know what is in it.

Q. Look at it and see if you cannot recall receiving this,

will you please?

This is a report, Dr. Frankenberg, made by Dr. Meyer, of a conference had in the United States Treasury in 1935. Does that refresh your recollection? A. Well, I do not remember anything about receiving this document. And if Fread it, it may

Q. Well, all right; I ask you to look at the section bearing the number 1—"Relations of Mr. Fritz von Opel to Uebersee." A. Yes.

Q. Do you remember receiving the information contained

therein? A. I do not remember, no.

Q. You have no recollection of learning that the United States Treasury Department sought information concerning the ownership of Uebersee, and was told it was owned by a group? A. By a group?

Q. That is what Dr. Meyer says, is it not-

"Mr. Bernstein insisted it should be known to me whether Mr. you Opel has a controlling interest. I repeated that a group of which Mr. you Opel was a member had a controlling interest, but that I did not know the composition of that group."

A. Well, maybe-

Mr. Gallagher: What is the question, now, please?

Mr. Burling: "Do you remember receiving this information?"

The Witness: I do not remember having received this information.

By Mr. Burling:

Q. Do you know of a Liechtensteinean legal entity called "Frima"? A. Yes.

Q. And is it correct that whatever it is, Frima is a legal institution which does not exist in any law except that of Liechtenstein? Ac That is correct.

Q. It is substantially unexplainable, except in Liechtensteinean terms? Is that correct? A. It is very hard to explain. It comes nearest to a so-called "Stiftung", according to the Swiss law.

Q. It is not exactly a trust, is it? A. No; in the American sense, it is no trust whatsoever. And also it has characteristics of a beneficiary, but it has not the qualities of an American trust.

Q. In fact, you said to Mr. Worthington and to Mr. Looney as follows, did you not?—

"That is something which does not exist in the whole world, except in the principality of Lichtenstein. I could not explain what that is here, because of the laws here. It is nothing. It is just a name. As far as this 'Frima' ever acted or was in the books, it does not mean anything else but Fritz."

A. That is correct, because he was the beneficial owner of same.

- Q. Will you look at Defendant's Exhibit 67-A and state whether or not that is a telegram which you sent to your bank in Zurich from Montreal? A. Yes, I think I sent this.
- Q. Who is the person named in the second word of the telegram?—"Henggeler"? A. It is a lawyer and a member of the board of directors of Uebersee.
- Q. The first sentence of this telegram or cable to your bank is:

"Inform Henggeler sale of stock to if possible 1271 more than eleven purchasers, to be effective immediately, not later than end of month."

What stock did you refer to? A. Apparently the Ueber-

a see stock.

Q. And why did you direct your bank to inform Henggeler that the Uebersee shares were to be sold to more than eleven purchasers immediately! A. It was at that time, Mr. von Opel was wishing to do so; I do not recollect the reasons; but that is what he was doing.

Q. You do not know the reasons! A. Well, it may be that partly the reasons were to get an institution in between this ownership, since I think at that time it must have been the time Nazy pressure was exercised upon his father.

And then it seems to me that at that time it was also desirable from the point of view that the company should not be considered to be a personally-owned company.

Q. Didn't you and Fritz von Opel have discussions in 1936, the substance of which was that since he was the sole owner of Frima, which in turn was the sole owner of Uebersee, that Uebersee was to be taxed as a personal holding company? A. I remember very faintly having had these discussions. But I too know that later on this whole

setup was not recognized by the Treasury anyway,

1272 and it was settled in some way or another.

Q. Yes; but that was not until 1942, though? Isn't that right? A. I don't know when. I would say in 1940 or so, or maybe in 1941.

Q. Oh, you think that it was in 1941 that the personal holding company tax was in fact imposed back for the

years from 1936 to 19411 A. I think so.

Q. But, at any rate, isn't it true that the transfer of the shares in 1936 was primarily for the purpose of evading or avoiding, as the case may be, the American personal holding company tax? A. Well, it was, as far as I understand, as far as I remember this matter better, because it was discussed later on in 1940. As a matter of fact, it was, as far as I was concerned or informed, in 1940, perfectly legal to avoid this tax until the tax law was changed later on, the effect of which I never did know.

Q. That would depend upon whether the sale that took place in 1936 was a sham, wouldn't it? A. I mean, it was perfectly legal to do so in 1936. I am not a tax expert.

Q. Who told you it was perfectly legal to do what was done in 1936? A. I remember the fact from the

1273 negotiations in 1940.

Q. All right. You advised the accountants for Uebersee in 1936, did you not, that in filling out returns hereafter they were to report that Uebersee was no longer a personal holding company? Do you remember that? A. I advised them?

Q. Yes, you did—didn't you? A. I don't think so. If I did so then certainly I was convinced it was quite all right.

Mr. Burling: I am about to inquire concerning a document which is already in the possession of plaintiffs. It was taken from plaintiff's files, and it is the defendant's exhibit 83.

I ask a concession as to the genuineness of the photostat.

Mr. Gallagher: If it came from our files, it is perfectly all right. We concede it.

By Mr. Burling:

Q. I show you Defendant's Exhibit 83--which I now offer in evidence as conceded by the plaintiff—and ask you if that is not a letter which you received from Bayer & Clauson. A. Maybe I received this letter. As a matter of fact, I lived in Switzerland. I had not the slightest knowledge about the American taxation, not the slight-

1274 (The letter referred to was marked and received in evidence as Defendant's Exhibit No. 83.)

By Mr. Burling:

Q. Well, I want to read you a sentence from it, and we will see about it—in paragraph 3:

"We are also in receip; of your letter of July 28, 1936, with respect to the question of doing business in the United States. Since we were informed by you in June that Uebersee is no longer a personal holding company, we will eliminate that tax from our consideration."

Now, did you, by letter dated July 28, 1936, advise Bayer & Clauson, the accountants for the plaintiff, that the plaintiff was no longer a personal holding company? A. I certainly do not remember having done so.

Q. Do you have a copy of that letter in your files? A. I don't think so. But if I did so, if anything of this kind

had been done, then I certainly was convinced it was so. I didn't understand anything about American tax law.

Q. You were advised by Bayer & Clauson in this letter that the personal holding company tax, which would be payable in 1936, and therefore it must have been assessed for 1935, was \$28,736.64. Isn't that right? A. This letter says so. I am sure, if I received this letter, I wouldn't

have to look at it, because I was pretty sure Bayer 1275 & Clauson handled the whole tax operation in the United States. I didn't care a thing about the tax

cperation in the United States.

Q. You knew that Bayer & Clauson didn't handle a fake, sham, or wash sale to the Swiss National in 1936, didn't you? Didn't you do that? A. I did it?

Q. Yes, didn't you?

The stenographer can't take down gestures, and I cannot understand what you mean.

Did you do it, or not?

Mr. Gallagher: Your Honor, we object to the form of the question—a fake, sham, or wash—the three connotations put on the sale, to which we object.

The Court: It might be possible for him to answer it

a little later, whatever sale it was.

By Mr. Burling:

Q. Didn't you handle all the selling involved in 1936?. A. No; it wast handled by Henggeler. He was very much more familiar than I was with all this tax situation. He was in New York and informed Bayer & Clauson.

Q. But you informed Bayer & Clauson that the corporation was no longer a personal holding company? A. Be-

cause I was told so.

'Q. Who told you so? A. Maybe Mr. von Opel.

1276 I don't know who it was. I wouldn't have any judgment on it.

Q. But, at any rate, you had handled the Swiss end of the transaction! A. Henggeler did.

Q. But later didn't you go back to Zurich and handle this situation personally? A. No; Dr. Henggeler handled it.

Q. You did not! A. No.

Q. I see.

Mr. Burling: I will ask the plaintiffs to concede Defendant's Exhibit 84 and 84-A, which is a photostat of a cable taken from the files of the plaintiff corporation.

Mr. Gallagher: We concede it, if it is from our files.

Mr. Burling: Thank you.

May I have this marked?

(The documents referred to were marked and received in evidence as Defendant's Exhibits 84 and 84-A.)

Mr. Burling. I ask for a similar concession concerning 85 and 85-A.

Mr. Gallagher: The same concession.

(The documents referred to were marked and received in evidence as Defendant's Exhibits 85 and 85-A.)

1277 By Mr. Burling:

Q. I show you Defendant's Exhibit 85-A and ask you if that is not a cable which you received from your bank, dated June 17, 1936.

Mr. Ingoldsby: Your Honor, I don't object so particularly to this particular question; but I submit that great latitude has been allowed Mr. Burling in going beyond the scope of the direct examination. We have not raised any question on his cross examination on points which he himself has raised. But inasmuch as it has gone to this extent

during the period of time, we wish to make the point now.

The Court: What is this particular point?

Mr. Ingoldsby: This particular matter goes into-

How would you describe that document?

Mr. Burling: It goes into this transaction which we say is a fake, a sham, a dishonest transfer, which this witness was principally instrumental in doing, which I put in to attack his credibility, and also to show the mala fides and to show a continuous action on his part to hide—and I will make an offer of proof—

I offer to prove through this witness that in 1936 Frima purported to transfer its shares to eleven Swiss dummies, who paid nothing for the shares. The shares were left in

a Swiss bank.

The dummies gave options to Frima, and thus to 1278 Fritz von Opel, that they would sell back the shares at any time.

Also, von Opel contracted to purchase them at a later date. The purchase price was the same as the original purported sale price.

The purchasers never received the shares at any time;

they were always held by the bank.

And we contend that this was solely a device for evading the American personal holding company tax. In 1939 it was used in a case almost identical to the case at bar; it was used to defraud the British Government, that is, the Government of Tanganyika, by reporting that assets located in Tanganyika, which were owned by Uebersee, were Swiss owned and not German owned, in 1939, at a time when Fritz ven Opel admitted was still a German national.

The Court: Are you going to prove all that by this witness?

Mr. Burling: We can prove a great deal of that by this

witness, if Your Honor please.

The Court: I suppose his objection is that it doesn't relate to anything brought out on direct.

Mr. Burling: If Your Honor please, they did allude to

The Court: Was that in the direct examination? :

Mr. Ingoldsby: What question alludes to that sale?

Mr. Gallagher: That was in the cross examination. There was no question which alludes to this sale,

Your Honor.

The Court: I didn't remember it on direct.

Mr. Gallagher: Not at all.

Mr. Ingoldsby: Your Honor, I think we have been very patient in raising the objections.

The Court: Of course, there is a rule about it. If you want to make him a witness on that, and it is material.

Mr. Burling: I think I am entitled to call him as my witness on this point, and then impeach him, because this witness testified he was then a director of the corporation. Our testimony is that he became a managing director, and the rule is that a party may call a hostile witness, if he is an officer or managing agent of the corporation, and may not only ask him leading questions, but may impeach him.

Mr. Ingoldsby: I think the rule by which Mr. Burling is bound on that question is the statute in effect in the Dis-

trict of Columbia relating to hostile witnesses.

Mr. Burling: I think it is the Rules of Civil Procedure.
The Court: Yes, I think the Rules of Civil Procedure supersedes that.'

Mr. Burling: May I read the rule, Your Honor! It is 43 (b), the second sentence:

"A party may call an adverse party or an officer, director, or managing agent of a public or private corporation or

of a partnership or association which is an adverse party and interrogate him by leading questions and contradict and impeach him in all respects as if he

had been called by the adverse party."

It is perfectly obvious Uebersee is an adverse party, and this man is an officer of the adverse party, and the rule in direct terms covers the matter.

S

Mr. Ingeldsby: We still complain about the relevancy of it, Your Honor. We have no question that in 1936 the personal holding company tax was in effect. And all this would come down to would be an argument whether or not this was a lawful tax evasion or a legal-tax avoidance. I don't see that it has any materiality on any of the issues in this case. And it is stipulated by all the parties that all of the stock of Uebersee is owned by Frima.

The Court: You have circumstances in regard to this disposition of the stock and the proceeds of it, which indicate that for some purpose it got out into these various groups which you chart there yourselves to show that. And I presume the circumstances might have some bearing upon the question of ownership.

Mr. Ingoldsby: May I say this, in that respect, Your Honor? First of all that the chart was prepared only for the purposes of lending something towards the ultimate end of clarity.

And I might also point out on the chart, for the 1281 purposes of clarity, it went to the Swiss banking company, to Frima, and we ourselves X'd it out as immaterial, inasmuch as it was covered by the stipulation.

The Court: The point I have in mind is, it seems to me, though I don't know the case as well as you gentlemen seem to, that it seems to me that the progress of the transfer of these stocks all the way through might have some bearing on the ownership.

Mr. Ingoldsby: On the ownership ultimately being in a national of an enemy nation?

The Court: Yes. The whole problem of ownership is before the Court, and whatever transactions went on in regard to this property might have had some significance. I don't know.

Mr. Ingoldsby: Do you contend, Mr. Burling, that that has any bearing, whether a beneficial or real interest was owned by Wilhelm and Marta von Opel?

Mr. Burling: I am Surprised at the contention that this was X'd out. I think it was put in after the transaction was reversed in 1941, after the personal holding company liability was assessed, notwithstanding the transaction, and it was washed out.

My contention is that this has a very real bearing on the bona fides of the claim that Fritz von Opel is the bene-

ficial owner.

1282 The Court: That is what I understood his point

Mr. Ingoldsby: If that is his point, then I suppose that is quite different. But otherwise I would ask him to explain how.

Mn Burling: I could do that better by argument.

Mr. Ingoldsby: Your Honor, I don't want to be argumentative.

The Court: I would like to follow the pertinency of it, myself. Maybe I am wrong. Tell me again what your

point of relevancy is to the issue.

Mr. Burling: The relevancy to the issue is that a fraudulent and sham transaction was made here in 1936, which hid the frue ownership of this stock, whether Fritz or his father. I think it is relevant to show they held the stock in a manner which was fraudulent and a sham, from 1936 to 1941, as being on the probability that the presently asserted holding is a sham and fraudulent. I particular urge that argument, because I can show that in September, 1941, in an alien property proceeding—not a lawsuit, but an administrative proceeding in Tanganyika—this desice was used to defraud the British Alien Property Custodian.

The Court: By these people!

Mr. Burling: By these people, by this corporation, and by its officers and agents, yes, Your Honor,

Mr. Ingoldsby: I might say this, if that is the 1283 purpose, we might partially stipulate our joint ways through it: In other words, we would be willing to stipulate to the effect that at the time the stock was transferred.

to Frima, that one of the principal purposes of the transfer was to avoid the effects of the personal holding company tax law.

Mr. Burling: And will you further stipulate it was false, sham and frudulent transaction?

Mr. Ingoldsby: No. certainly not.

Mr. Burling: Then I think I have the right to adduce evidence on that point, Your Honor.

Mr. Gallagher: Your Honor, it was transferred in 1936 to the Swiss we concede for the purpose of tax avoidance, and it is contended upon the part of the Government that it was for the purpose of avoiding taxes.

Mr. Burling: I concede nothing happened, but it was a pure sham.

Mr. Gallagher: Will you state it was not held by the

Mr. Burling: It was held by the bank, although that is the wrong bank. But I contend the parties participated in a sham transaction, what Dr. Kronstein says is a Scheinvertrag. And we could put the evidence in, and you make a motion to strike.

The Court: There are limits to what you can prove as to the transactions of the parties. It may have some 1284 relevancy to ownership. I don't know what it will develop.

Mr. Gallagher: The chain of title, as to whether it was through Wilhelm or Fritz, has nothing to do with that little detour, that took place. It went out and came back to the same parties.

The Court: I think his point, starting with the transaction back at October 5, 1931, and tracing it all through, is that in the history with respect to the disposition of this stock, there were a series of what he claims to have been misrepresentations made from time to time, one in New York, and in this particular case, and now I think he is saying over there; that with respect to this very stock there were a series of misrepresentations, as I understand.

Mr. Burling: That is exactly right, Your Honor.

The Court: And that would be persuasive upon the Court in deciding if they went through a number of these, all dealing with the same stock, that then I would draw the conclusion that this testimony in this case on their part is equally to be considered, unless there is a showing in this case that it wasn't so.

Well, I will take it, and we will keep it within reasonable limitations, I suppose, and you can move to strike it a little

later.

You see, this witness is called a little out of turn, and I can tell a little better at the end of the case than I 1285 can now. I will take it provisionally.

By Mr. Burling:

Q. Is this document, Defendant's Exhibit 85-A, a telegram you received from your bank? A. It probably is.

Q. And do you see the words -

"Bankgesellschaft agrees to retention dollars and guaranty of margin of \$20,000 on the part of Adler subject to definite contractual settlement after your return."

Do you remember receiving that? A. I don't remember at all whether I received it. But it may be that I did.

Q. Does that recall to your mind that the settlement of this shares sale in 1936 did not go through until after your return to Zurich? A. This wire refers to a margin which was to be added by Adler with the Bankgesellschaft, and that is what it refers to, apparently, because the entire negotiation was by Gesellschaft, as conducted by Dr. Henggeler, and so far as von Opel was involved, because they had to put up the margin of \$20,000.

Mr. Burling: I ask the genuineness of Defendant's Exhibit S6-A and its translation be admitted as coming from plaintiff's files (banding the documents to counsel 1286 for plaintiff).

Mr. Gallagher: Yes, we concede that.

(The documents referred to were marked and received in evidence as Defendant's Exhibits 86 and 86-A.)

By Mr. Burling:

Q: Will you examine Defendant's Exhibit 86-A, which is headed "Memorandum for Dr. Frankenberg", and state whether you received that at any time.

Mr. Burling: May I have one moment, if Your Honor please!

The Court: All right.

Mr. Burling: May I have a concession as to Defendant's Exhibit 87-A, please (handing the document to counsel for plaintiff)?

By Mr. Burling:

Q. Have you answered my question whether you received. Defendant's Exhibit 86? A. I cannot say I received it.

Mr. Gallagher: It is conceded.

(The documents referred to were marked and received in evidence as Defendant's Exhibits 87 and 87-A.)

By Mr. Burling:

Q. Will you look at Defendant's Exhibit 87, which purports to be a copy of a letter to Dr. Henggeler, on 1287 June 19, 1936. Is that right?

Will you look at 86 and see if it is not true that that indicates that there were enclosed to you a memorandum or letter from the Bankgesellschaft of June 19 to Dr. Henggeler! It is Item No. 3. A. That is obviously what it is.

De So that Defendant's Exhibit 87 would appear to have been sent to you? Is that correct? A. Pardon me.

Q. A copy of Defendant's Exhibit 87 would appear to have been enclosed with Defendant's Exhibit 86, which is a

a memorandum to you? A. It appears so. But I could not remember it. I just want to repeat that in doing this transaction up here, or being in any way connected with it, I was purely doing nothing against any law, or to deceive, or to do any fraudulent business, as you expressed it.

Q. Isn't it the fact that the bank with which the contract or agreement between Frima and the bank was made, from the Swiss Bank Company, by the Swiss Union Bank— A. The Union Bank of Switzerland, yes.

Q. And isn't it true that Frima contracted with the Union

Bank on the following terms!- 2

One, it was to transfer its Uebersee shares to the bank;

Two, that the bank was then to find persons nominal purchasers;

Three, that cross actions were to be obtained whereby the purchasers were to agree to sell back the shares at the original purchase price;

Four, that the purchasers were to have the right to re-

quire the repurchase of the shares.

Am I right so far? A. I think you are right. It was per-

feetly legal.

- Q. And, in addition, a term of the agreement was that the purchasers were to contract either to give proxies to the bank, which would give proxies to Frima to vote the shares; or, in the alternative, the so-called purchasers were to contract to vote the shares as instructed by the bank and thus by Frima. A. That is the way it was done.
 - Q. That is the way it was done! A. Yes.
 - Q. And the purchasers did not receive the shares, did they! A. Oh, yes.

Q. They did? A. Oh, yes.

Q. Aren't you mistaken about that! Weren't the shares deposited in a bank called the "Bank in Baden"! A. Well,

that is an affiliation of the Union Bank of Switzerland, apparently.

Q. Did the purchasers ever take the shares into their own two hands, like that (indicating)? A. I couldn't tell you.

Q. Well, you know they didn't, don't you? A. No. Well, because the Bank of Baden could have delivered them.

Q. Didn't the Bank of Baden contract not to deliver them? A. Not to my knowledge.

Q. Don't you know, also, that the nominal purchase price was not paid by the purchasers? A. No.

Q. You don't know that! A. No; I am pretty sure that

·the purchasers paid the purchase price.

Q. Weren't the purchasers credited by the Union Bank of Switzerland, with the purchase price which they nominally paid! Isn't that how it was done! A. No. The purchase was paid, as far as I can remember, the purchase price, to the Union Bank of Switzerland. But the Union Bank of Switzerland didn't turn over the purchase price to Frima, but kept them in a special account.

Q. They were kept in blocked account, against the obligation of Frima to repurchase the shares! Isn't. 1290 that right! A. That is correct. And Frima was entitled to invest this money in stocks.

Q. But it had to be held in the bank? A. It had to be

held in the bank. V

Q. So the purchasers acquired no beneficial or economic interest in the shares of Overseas, did they? A. Yes; they paid for it.

Q. What interest did they acquire, if they had to sell the shares back at the same price they paid, and if they didn't have any power to vote the stock? A. You see, it is very hard to explain these matters which were absolutely usual in Switzerland and 100 per cent unusual in this country. Because, after all, Switzerland was the place where capital from all over the world used to come to, just for the purpose of hiding.

Q. For the purpose of being hidden? A. Yes, for the purpose of being hidden. And that was, in Switzerland, very often the case.

Q. And that is the fact in the case as bar, isn't it? A. The what?

Q. The case here, Uebersee Finanz-Korporation against Clark! A. No.

1291 Q. It isn't! A. Not at all.

Q. I see. A. But, as a matter of fact, if you look at the history of Europe, you will understand that this feeling was much more popular than it possibly could be in this country, where things never were tangled and without the overthrowing of governments and revolutions.

Q. I didn't understand one part of your testimony. Do you think that the purchasers actually did receive the certificates, or is it merely your testimony that for all you know the bank in Baden may have delivered the certificates to them? A. I think there isn't the slightest difference.

Q. I would just like to know. A. Yes, I wouldn't know.

Q. You don't have any idea? A. No; but the proxies

were issued by the purchasers.

Q. It is within your personal knowledge, is it not, that there were negotiations between the United States Treasury and Mr. von Opel in 1941, and that he then had to pay the personal holding company tax anyhow? A. I remember it.

Q. And, after that, these transactions were reversed, and the purported holders were washed out? Isn't that 1292 correct? A. Well, that had nothing to do with the thing whatsoever.

Q. Well, it is correct, isn't it? A. It is the fact. But at that time, and it may be even a great damage to this case now, it was the idea of dissolving the company, Uebersee, and to transfer all its assets to Fritz von Opel here in the United States. That was only—that was not in consequence of the settlement of this tax case.

Q. I see. A. But everybody felt-

Q. I take it you accuse me of the error of post hoc propter hoc. A. Pardon me?

Q. I will withdraw that.

In any event, you personally know that Fritz von Opel paid the tax, the personal holding company tax, as official

stockholder, do you not, for the years 1936 through 1941? A. I think as far as I remember there was an arrangement worked out with the tax authorities; and, as far as I remember, in the meantime, before anybody paid these taxes, all the property was vested, and as far as I further remember, until a couple of years ago, I heard the Alien Property, Custodian didn't pay it.

Q. At any rate, after the arrangement whereby 1293 Fritz did pay the taxes, this transaction was reversed? Ish't that correct? A. I couldn't tell you when the tax settlement was, and when the reversing was. As far as I see it, it had no connection whatsoever.

Q 1 want to ask you about this portion of your interrogation, reading from page 29:

Were you asked this question, and did you give this answer!-

"Question: Now, coming back to the sale, you say that Fritz came to you and wanted to sell these shares for some purpose!

"Answer: Yes.

"Question: Did he tell you what the purpose was?

"Answer: No, I could not remember. It was a complicated matter. First of all, he was always squeezed, or his father was squeezed a ways because he gave this large amount of foreign exchange, and there were inquiries. So maybe he thought at that time that it was wise to have these spires just to show they were not owned by them at all any more. But I do not exactly recollect."

Can you remember that testimony? A. I can't remember it for the moment; but I said some things similar before.

Q. What I am interested in is what you meant by saying that it was wise to have these shares to show they were not owned by them at all any more?

what was the antecedent of the pronoun "them"? A. I can only say that that maybe is a misprint, or I may have been not expressing myself very carefully. But there is no doubt about only Fritz von Opel owning the shares.

"Q. You are sure it isn't a slip of the tongue by which you really meant the Opel family? A. No, certainly not.

Q. What does the word "Consortium" meaning in Swiss banking practice? A. Well, a verbal consideration would mean people coming together for the purpose of some business.

*Q. Would the word "syndicate" be a fair translation?

A. If would not be a bad translation.

Q. What is "Consortium O"? A. In the case of-

Q. As reflected in Uebersee's books? A. That it was just a name.

Q. What does it mean? At As a matter of fact, first it was Fritz—I remember having seen this item—and then Mr. Geng, the bookkeeper, put it just in this way. It is a

designation which might have been used also in the 1295 preliminary stages of forming a corporation; so later

on, as you will see, the ownership of this property from "Consortium O" went into Frima and Frima was Fritz von Opel again. So it couldn't have any real meaning.

Q. Fritz von Opel is the gentleman sitting have by me?

A. Yes, sir.

Q. Does he look to you like a group of people, or a syndicate? A. It was a technical sort of a name, just put in by the bookkeeper. I didn't advise him to do so, and I wouldn't know who could have done it.

Q. Didn't you understand "Consortium O" was the syndicate Opal, or the Opel family! A. But there wasn't any

syndicate Opt

Q. That is the place in this case. My question is, didn't you understand that "Consortium O" meant the Opel family! A. No. It can be misleading, but I am pretty sure it wasn't meant in this way.

Q. Changing the subject, you never had any business discussion at all with Crittenden in Zurich in the summer of 1937? Is that testimony? A. As far as I recember,

yes. Because I had nothing that I really could discuss with.
Mr. Crittenden.

Q. You were staying on that occasion in the Dolder 1296 Grand Hotel in Zurich? A. Correct.

Q. Didn't Crittenden and Bayer come to the hotel and have a business discussion with you? A. I remember they came with their wives, and had dinner.

Q. No; didn't they have a business discussion with you? A. I must say it was really news to me, it escaped completely out of my mind that I even met them in Zurich, and I couldn't recollect to have any sort of a business discussion "h Mr. Crittenden anyway, because it was out of my competence. Mr. von Opel was handling this oil ricture. I didn't understand anything about oil; so I couldn't discuss it, or he couldn't discuss it with me.

Q. Adler & Company has some famous painting or paintings by a famous painter somewhere in its offices in Zurich? Is that right? A. It used to have, formerly.

Q. And it had in 1937 A. Yes.

Q. It had a collection of Degas paintings? A. There were three, as a matter of fact.

Q. And one of them was behind the door, so that when you opened the door, the painting was behind the 1297 door! Isn't that correct! A. It was a sort of a conference room, and there were these paintings hanging. Which one was which, I wouldn't know.

Q. But you rer. mber vividly when you opened the door, or if the door was left open, you couldn't see the painting?

A. There were at least five paintings.

Q. I am talking about one of the three biggest paintings. Didn't you have a discussion with Mr. Crittenden in which you said this Degas painting was very badly hung, because when you opened the door you couldn't see 1467

Have you any idea at all how Mr. Crittenden came to learn there Degas paintings in the Adler Bank? A. Ob. I remember he visited with me at the Adler Bank.

Q. In the fall of 1937, were you in New York? A. Yes.

Q. Where did you stay? A. I stayed at the Plaza.

Q. You, Mr. von Opel, and Mr. and Mrs. Tritten had dinner together at the Plaza, did you not? A. Mr. Crittenden?

. Q. Mr. and Mrs. Crittenden, Mr. von Opel, and you? A.

It is possible, but I really wouldn't remember.

Q. Now, on the day, or within a day or two either 1298 way, of a dinner which you had with the Crittendens

and von Opel, didn't you in fact have a discussion with Mr. Crittenden about the oil business, at which Mr. von Opel was not present? A. Mr. Crittenden was a great talker, and what he told me about the oil business, I wouldn't know, if I listened to it at all, because I wouldn't understand anything of it.

Q. All right. But did you have a business conversa-

tion? A. No, no business conversation.

Q. Wait a minute. I haven't finished my question—Did you have a business conversation with Crittenden in New York, at which von Opel wasn't present, and I fix the date as of about October, 1937? A. I really couldn't remember: I do not believe it.

Q. You do not believe you did? A. I really do not believe it, because I don't know what I possibly could have

discussed with him.

Q. At about this time did you, Fritz von Opel, and Mason Houghland have a business discussion at the Plaza Hotel in New York? A. Yes, I met there Mr. Houghland.

Q. Do you see Mr. Houghland in this courtroom?

Mr. Burling: Will you stand up, please, Hr. Hough-land, and come forward?

(A gentleman in the courtroom stood and came 1299 forward.)

By Mr. Burling:

Q. Do you recognize Mr. Houghland? A. Faintly; but he wouldn't recognize me, either.

Q. He can testify about that. Do you recognize this

gentleman? A. I believe that is Mr. Houghland.

Q. Thank you. Now, did you, Fritz von Opel, and Houghland have a business discussion at the Plaza, downstairs? A. I remember vaguely that we sat downstairs and we had a business talk.

Q. And in the course of this discussion did you tell Mr. Houghland you could not approve a proposal he

made? A. I don't think so.

Q. Do you remember he talked about setting up small subsidiary corporations? A. I was the first time in this country in 1936, for six weeks, and then in the summer or fall in 1937. What should I understanding about putting up large tank stations or small ones? I am simply, I have no knowledge of this sort of business.

Q. Well, you had been discussing the investments of Uebersee ever since 1932 with Fritz von Opel, had you

not? A. Yes, from time to time.

Q. And so you knew particularly about Spur, did you not?—Spur Distributing Company? A. I knew what 1300 it was, yes.

Q. And didn't you talk about a proposal to have Spur set up some small subsidiaries/with Houghland in 1937! A. I could not imagine what performance that should be, on my part, in such a business.

Q. Whether or not you could imagine it, are you certain you did not have such a conversation? A. At least,

I do not remember it, not in the slightest way.

Q. Let me read a section from folio 175 of the affidavit

of Fritz von Opel:

"In the summer of 1932 and after my return to Europe I discussed with Dr. Frankenberg my concern over the future gaseline supply of the company. I feared increasing pressure of the larger companies against smaller competitors like Spur Distributing Company, Inc., and I decided in concert with Dr. Frankenberg to take steps towards supplementing the gasoline distributing system

of Spur with oil reserves and a refinery so as to constitute an independent unit and protect Spur for a period of some 15 years."

In so far as that relates to your conversations between you and von Opel, is that statement correct? A. I really do not remember. But I do remember that once, maybe

much later, or at that time, I couldn't tell you, Fritz 1301 von Opel told me his idea that Spur should have

an independent supply of oil. And therefore he was inclined to acquire oil properties. That may well be.

Q. Now, did you ever decide to take steps to supplement Spur with oil reserves? A. No, most certainly not, as I was never instrumental in any of these investments. Also, I didn't make any contract with any of the managers of the American companies. That wasn't in the side of the business I was in.

Q. You understand what the words "in concert with"

mean, don't you? A. "In concert with"?

Q. Yes. I will show you. It says here, does it not?—
"I decided, in concert with Dr. Frankenberg, to take steps".—

Do you think that is wrong? A. I don't know whether it is wrong. I can only repeat I never was instrumental

in this sort of investments.

Q. You must know that it was either right or wrong. Either you helped Fritz von Opel decide, or you and he decided together—which is what he swears—or you didn't decide it together. Which is it? A. He told me about it—

Q. Which is it, please? A. But I can only repeat—
1302 Q. Will you answer my question? Did you and
Fritz von Opel decide this in concert, or didn't you?

A. Not the investments.

Mr. Burling: I have no further questions.

Mr. Ingoldsby: May we have just one moment, Your Honor!

Mr. Gallagher: Your Honor, we now move to strike Mr. Burling's testimony about any fraud with respect to the British Government. He stated he was going to prove this through this witness.

Mr. Burling: I just forgot it. I did omit it, Your Honor.

The Court: There is nothing to strike.

Mr. Burling: I apologize to counsel. I did forget the topic. I will go ahead. Thank you, Mr. Gallagher.

Mr. Gallagher: You are welcome.

The Court: Do you think you can complete this in ten or fifteen minutes?

Mr. Burling: This will take only five, Your Honor. Mr. Gallagher: I won't take over ten, Your Honor.

The Court: All right, I have to leave here promptly at five. I will come back tonight and finish up, if it is necessary.

Mr. Burling: I don't believe it will be, Your Honor.
I ask plaintiffs to concede Defendant's Exhibit
1303 88-A/as being a photostat of a document contained in plaintiff's files.

By Mr. Burling:

Q. Will you look at Defendant's Exhibit 88-A and state whether you have seen it before?

Mr. Burling: Since it is conceded, Your Honor, may I read it?

The Court: Yes.

(The documents referred to were marked and received in evidence as Defendant's Exhibits 88 and 88-A.)

Mr. Burling: This letter is dated November 14, 1939, addressed to Messrs. Leslie, Strachan & Co., Chartered Accountants, Standard Bank Chambers, P. O. Box 45, Dar es Salaam."

And I ask Your to note judicially that that is the administrative capital of the mandated territory of Tanganyika.

"We are in receipt of your letter dated October 23rd and beg to hand you enclosed certificate from the Union Bank of Switzerland, Zurich, duly legalised by the British Consulat General, Zurich, which you may present to the Custodian. We assume that this certificate will induce the Custodian to convince himself that all holders of our shares are of Swiss nationality. At the same time

he may gather from it that Mr. von Opel is not a shareholder of our company. For these reasons we presume that the release of our property will

take place in due time."

And the rest of the letter is irrelevant.

By Mr. Burling:

Q. Did you ever see that letter before? A. I don't think so.

Q/ How do you write your initial? And I call attention to a mark appearing in the lower right-hand corner of the photostat and ask you if that is your initial. A. I usually wouldn't write it this way.

Q. I see. All right.

You know, do you not, that Overseas in 1939, prior to the outbreak of war, owned a plantation in Tanganyika! A. Yes.

Q. And you know that that plantation was seized by the British Custodian as being German owned, in September, 1939? A. I remember that.

Q. You remember it. And you know, do you not, that these two different letters were sent to Tanganyika by Overseas, and that as the result of such correspondence, the British Custodian returned the Mantation to Overseas' manager, or to Overseas' possession! A. When was

1305 Q. In November or December, 1939, was it not?

Don't you recall that Overseas got back the vested plantation? A. I think so, yes.

Q. Yes, I think so, too. A. But, after all, at that time there was no fraud involved.

Q. There was no war in September, October, and November, 1939? A. Yes; but, first of all, the shares were really owned by Swiss people, and, as I remember, the Union Bank of Switzerland.

The Court (to Mr. Burling): He said there was no fraud, not "war".

Mr. Burling: Oh, I am sorry."

This is the last document we have on this topic.

(The documents referred to were marked for identification as Defendant's Exhibits 89 and 89-A.)

Mr. Burling: I ask that Defendant's Exhibit 89-A be conceded as a photostat of a document taken from plaintiff's files.

Mr. Gallagher: Yes.

Mr. Burling: I offer it in evidence, Your Honor.

(The documents previously marked for identification Defendant's Exhibits 89 and 89-A were received in evidence.)

1306 By Mr. Burling:

Q. Will you examine this letter and state whether you ever saw it before—and since it is conceded to be a genuine document, I will read it, if I may, Your Honor.

This is a letter to Uebersee, from Messrs. Leske, Strachan & Company, Chartered Accountants, of Dar es Salaam, Tanganyika Territory, dated October 23, 1939:

"Dear Sirs: We are obliged for your letter of 6th October which reached us last week by airmail.

"The certificate from the Union Bank of Switzerland has been submitted to the Custodian of Enemy Property here. Our translation of the German is as follows '97 parts are lying with us and are in Swiss possession' and the Custodian points out that the actual ownership of the shares is not stated.

"Would you please therefore obtain from the Bank a similar letter giving the names of the actual holders of the shares at 3rd September 1939 and their nationality in each case. Should the 97 shares, or a majority of them, be held by a company the Custodian will eventually require similar information regarding the holding company.

"It is believed locally that Mr. von Opel is a German subject and a majority shareholder in your company and

the Custodian requests full information regarding

1307 his relation to the company.

"At the same time we could point out that your estate has not been confiscated. The Custodian, following the internment of the manager, placed watchmen and caretakers on the estate to safeguard the assets. These, he will be pleased to withdraw on receipt of evidence that the estate belonged at 3rd September last to neutral subjects.

"It will assist us if you will include an English transla-

tion of any certificate obtained from the Bank.

"We are informed that Mr. Tassin was a member of the Nazi party and although some of the interness have been released, there is no immediate possibility of his being released on parole.

"Yours faithfully, Leslie, Strachan & Co."

By Mr. Burling:

Q. Did you see that letter when it was received? A. I

have no recollection of it.

Q. Did you not understend that the Custodian in Tanganyika wanted to know the real or true ownership of the estate, the plantation, in Tanganyika?

Mr. Ingoldsby: May I ask the answer to the prior ques-

The Reporter (reading): "Answer: I have no recollection of it."

1308 Mr. Ingoldsby: Then, Your Honor, I submit the next question is improper, if he doesn't have any recollection of it.

The Court: He probably would have to speak for himself.

Mr. Burling: He said he didn't remember this letter, but he did remember the taking of possession of the plantation.

The Court: His recollection wouldn't be material, unless he took some action on it, at least his interpretation.

The Witness: I really didn't do anything about it.

Mr. Burling: All right, That is all I have.

Redirect Examination

By Mr. Gallagher:

Q. Just a few questions, Dr. Frankenberg— First of all, Mr. Burling has gone into that New York affidavit and stressed the use of a word here or a word there. Let me read to you from the commencement of this proceeding:

"Mr. Worthington: Gentlemen, this is just merely a little informal further investigation that is being exercised under the powers of the Alien Property Custodian as they have been continued by the new Executive Order under the Trading with the Enemy Act, and it will be merely an informal interrogation. We want everyone to feel free to enter into the proceedings in any way they wish."

1309 As you know, the interrogation went on, and was there any necessity, in your opinion at that time, to weigh very carefully every word?

Had you been sworn in, let me ask, at that time? A. No, I had not.

Q. And when was the oath administered to you? A. Afterwards.

Q. And how did that come about? A. I asked him what you call an informal hearing.

• Q. Yes! A. Because I wasn't aware at all that an oath would have to be taken.

Q. Yes, and what happened in connection with the oath? When was that taken? When did that come about? A. As I remember, Mr. Worthington or Mr. Looney said, "Now, let us take an oath."

Q. And this was after you had testified? A. After both of us had testified.

Q. And you agreed to it? A. Yes, I agreed to it.

Q. And prior to that time you thought, it was a little pleasant get-together, to give them information with which they could go to Europe and investigate! A. That was the purpose of it.

414 00

1310 Q. And you endeavored to cooperate to the fullest possible extent? A. That is correct.

Mr. Burling: I appreciate the lateness of the hour; but Mr. Gallagher knows it is not proper to lead his own with ness and put words in his mouth.

Mr. Gallagher: All right, Mr. Burling.

By Mr. Gallagher:

Q. Now, plaintiffs have offered in evidence, Dr. Frankenberg, Plaintiff's Exhibits 78 and 79, 78 being a letter of June 25, 1936, which purports to reflect the sales of the shares to the Swiss. A. Yes.

Q. And Plaintiff's Exhibit 79 reflects that the 97 shares have been deposited with the Union Bank on May 30, 1936.

And Plaintiff's Exhibit 80 reflects that they were passed over to the Union Bank on the 22nd of June, 1936, and finally returned to the Union Bank of Zurich on November 4, 1941.

New, Dr. Frankenberg, is it not a fact that interest was paid during the five-year period, in the amount of some nine or ten thousand dollars a year to the holders of this stock? A. That is correct.

1311 Q. So a total of some lifty thousand dollars in interest was paid to the persons who had purchased this stock! Is that not correct! A. That is correct.

Q. Now, as far as Mr. Houghland is concerned, in any of your conversations with Mr. Houghland, did you ever say you personally would not permit, or you would not give your approval, or you would not in any way—

Mr. Burling: I object to the leading questions in this fashion, Your Honor.

Mr. Gallagher: I think, on redirect, Your Honor, I can meet the type of questions counsel was asking.

By Mg. Gallagher:

Q. Did you state you would not approve or would not permit or did you express in any other fashion to Mr. Houghland as to oil properties or subsidiaries in Spuri A. I couldn't possibly have done so.

The Court: The question is not whether you could have, but whether you did.

Mr. Buring: The million dollar loan in the oil refineries related to Mr. Crittenden and not to Mr. Houghland.

Mr. Gallagher: Very well. We will strike the question, and let us frame it in this way:

By Mr. Gallagher:

Q. Did you ever in any conversation with Mr. 1312 Houghland, to your recollection, tell him you would not approve of any deals or permit of any financial

transaction with reference to Mr. Fritz von Opel? A. To the very best of my recollection, I never did.

Q. Did you ever act as Mr. Wilhelm von Opel's agent, at

his direction? A. I certainly did not.

Q. And did you ever have any oral or written agreement with Mr. Wilhelm von Opel personally to act as his agent?

A. I never had.

Q. Now, in connection with this key, let us see if we can clear that up a little bit. If I understand correctly, the key to this safety deposit box was given to you some time in the year or years preceding 1935, that Mr. Houghland is talking about. Is that correct! A. That is correct.

Q. At that time you have the key to the box, with Uebersee shares in it, and you have the key for two purposes:

One, to take the shares out to yote them. A. As stated before.

Mr. Burling: Again I object, Your Honor.

The Court: He has been over that before.

Mr. Gallagher: I thought it was important, Your Honor.

The Court: And you are leading him. Mr. Gallagher: All right, sir.

1313 By Mr. Gallagher:

Q. Will you state the purposes for which you were originally given the key and for which you had it in your possession? A. I once wish to state that I had the key, but what was much more essential, I had the power of attorney to go with Mr. Geng, and not even myself alone, because it was a key you could not come to the bank and open the safe. In Switzerland you have to be registered, and I had to have a power of attorney issued by Mr. von Opel, to open the safe.

The purpose was to get the stock out from time to time, to vote it; and, second, the Uebersee shares were at some time, I don't know, whether it was 1933 or 1934, but anyway

at that time they were serving as collateral for leans granted by Adler & Company, to the corporation here; the Uebersee Corporation.

Q. You say as a positive fact that in year 1935 you did not have any conversation at all with Fritz von Opel, in which he asked you, in which he asked you, to act as his father's agent? Did you say you never had such a conversation? A. I didn't well remember. It may be such a conversation, that he asked me. It wouldn't have meant anything important, it wouldn't be of any importance to me.

Please understand that Mr. von Opel came to me 1314 as a banker. He paid for the stock. He bought all the securities in the corporation; so he could do with his money as he pleased. Whether he stipulated usufract for his father, or gave his money away, let us say, as a gift to the University of Zurich, it was just up to him:

Q. You would not say you positively remember, then, you never had such a conversation with Mr. von Opel! Is that true! A. It may be.

Mr. Burling: I can't hear.

The Witness: It may be, if you ask me now, I remembered sometime, but I couldn't fix the year, there was a certain pressure upon Wilhelm von Opel, and in this connection—I really do not very well recollect, but if you ask me, I might say that it may be that some time there was such a conversation, in which he asked me whether I would act. But I didn't pay any attention to that.

By Mr. Gallagher:

Q. Now, Mr. Burling read to you a portion of an answer that is in this interrogation with Mr. Worthington where in New York, and he only read the first part of your answer. I want to read the whole answer to you now, and ask you whether or not this still is the fact. First the question:

"Did you ever talk to Wilhelm von Opel about this usufruct?

1315 "Answer: Well, I remember he told me in these years about it; but I wasn't—that was before I came into the picture."

That is where Mr. Burling stopped, and here is the rest of it:

"The moment I came into the picture it was only the moment Uebersee was acquired, when the company was acquired; and then the assets first held in custody were Cebersee's, and then later on acquired by Uebersee. But Uebersee never, nor I myself, made any sort of any arrangements with Wilhelm von Opel."

Is that a fact? A. That is a fact. ... Mr. Gallagher: That is all.

Recross Examination

By Mr. Burling:

Q. Your testimony now is that you do not know whether or not you had a conversation in the year 1935 in which Fritz von Opel asked you to serve as his father's egent in holding the key? You have no knowledge either way? A. I couldn't recall it. If you would give me some more clues to it. I might remember.

The Court (to the witness): He wanted to know what your testimony was.

The Witness: Oh, the testimony.

1316 The Court: What you told Mr Gallagher a moment ago.

The Witness: I said that it may have been that such conversations took place.